

**AGREEMENT**

**BETWEEN THE**

**CITY OF SAN DIEGO**



**AND**

**SHOTSPOTTER, INC. TO FURNISH THE  
CITY OF SAN DIEGO WITH A LICENSE  
TO USE THE GUNSHOT DETECTION,  
LOCATION, AND FORENSIC ANALYSIS  
SERVICE AND RELATED SERVICES**

## AGREEMENT

This Agreement (Agreement) is entered into by and between the City of San Diego, a municipal corporation (City), and ShotSpotter, Inc., a Delaware corporation (Contractor).

## RECITALS

- A. City wishes to retain Contractor to provide a subscription services for a license to use the Gunshot Detection, Location, and Forensic Analysis Service (Services) as further described in the Scope of Work, attached hereto as Exhibit A.
- B. City and Contractor (collectively, the "Parties") wish to enter into an agreement whereby City will retain Contractor to provide the Services.
- C. This Agreement is exempt from competitive bidding requirements pursuant to San Diego Municipal Code (SDMC) section 22.3208(d) because the Purchasing Agent has certified that the award of a sole source contract is necessary under SDMC section 22.3016(a).

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

## ARTICLE 1 SCOPE AND TERM OF CONTRACT

**1.1 Scope of Services.** Contractor shall provide the Services to the City as described in Exhibit A, Scope of Work, which is incorporated herein by reference.

**1.2 Contract Administrator.** The San Diego Police Department (Department) is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department as follows:

NAME Lisa McKean  
TITLE Lieutenant  
ADDRESS 1401 Broadway, San Diego, CA  
DEPT. Operational Support  
PHONE (619) 531-2149  
E-MAIL lmckean@pd.sandiego.gov

**1.2.1 Notices.** Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the above designated Contract Administrator. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Any party entitled or required to receive notice under this Contract may, by like notice,

designate a different address to which notices shall be sent.

**1.3 Submittals Required with the Agreement.** Contractor is required to submit all forms and information before the Agreement is executed: 1) Contractor Standard Pledge of Compliance Form; and 2) EOC documents.

**1.4 Term.** Upon this Agreement's Effective Date, the initial term of the agreement will begin on September 23, 2021 with payments due on a month-to-month basis beginning the first of each month through June 30, 2022. After June 30, 2022, City may, in its sole discretion, extend this Agreement for four (4) additional one-year period(s). City agrees to provide Contractor with a minimum of 30 days notice to exercise the option not to extend the agreement during the month-to-month term. City agrees to provide Contractor with a minimum of 60 days notice to exercise the one-year options to extend the Agreement. The term of this Agreement shall not exceed five (5) years unless approved by the City Council by ordinance.

**1.5 Effective Date.** This Agreement shall be effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. (Effective Date).

## **ARTICLE 2 WAGE REQUIREMENTS**

**2.1 PREVAILING WAGES.** Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Contract cumulatively exceeding \$15,000, Bidder and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to San Diego Municipal Code Chapter 2, Article 2, Division 42. Bidder must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

**2.1.1 Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, Bidder and its subcontractors shall ensure that all workers who perform work under this Contract are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

**2.1.2.** Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Bidder and its subcontractors shall

post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

**2.1.3.** The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Contract. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Contract, each successive predetermined wage rate shall apply to this Contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Contract, such wage rate shall apply to the balance of the Contract.

**2.2. Penalties for Violations.** Bidder and its subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

**2.3. Payroll Records.** Bidder and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Bidder shall require its subcontractors to also comply with section 1776. Bidder and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Bidder is responsible for ensuring its subcontractors submit certified payroll records to the City. Bidder and its subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

**2.4. Apprentices.** Bidder and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Bidder shall be held responsible for their compliance as well as the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

**2.5. Working Hours.** Bidder and its subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

**2.6. Required Provisions for Subcontracts.** Bidder shall include at a minimum a copy of the

following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

**2.7. Labor Code Section 1861 Certification.** Bidder in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Bidder certifies that “I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.”

**2.8. Labor Compliance Program.** The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego’s Equal Opportunity Contracting Department at 619-236-6000.

**2.9. Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. A Bidder or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), “[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

**2.9.1.** A Bidder’s inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

**2.9.2.** A Contract entered into with any Bidder or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a Contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, Bidder, or any subcontractor to comply with the requirements of section 1725.5 of this section.

**2.9.3.** By submitting a bid or proposal to the City, Bidder is certifying that he or she has verified that all subcontractors used on this public works project are registered with the DIR in

compliance with Labor Code sections 1771.1 and 1725.5, and Bidder shall provide proof of registration for themselves and all listed subcontractors to the City at the time of bid or proposal due date or upon request.

**2.10. Stop Order.** For Bidder or its subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered Bidder or unregistered subcontractor(s) on ALL public works until the unregistered Bidder or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

**2.11. List of all Subcontractors.** The City may ask Bidder for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this contract at any time during performance of this contract, and Bidder shall provide the list within ten (10) working days of the City's request. Additionally, Bidder shall provide the City with a complete list of all subcontractors utilized on this contract (regardless of tier), within ten working days of the completion of the contract, along with their DIR registration numbers. The City shall withhold final payment to Bidder until at least 30 days after this information is provided to the City.

**2.12. Exemptions for Small Projects.** There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Bidder shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

**2.12.1. Registration.** The Bidder will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

**2.12.2. Certified Payroll Records.** The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. The Bidder will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).

**2.12.3. List of all Subcontractors.** The Bidder shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 11 above. (Labor Code section 1773.3).

### **ARTICLE 3 COMPENSATION**

**3.1 Amount of Compensation.** City shall pay Contractor for performance of all Services rendered in accordance with this Agreement in an amount not to exceed \$1,146,107.05.

**3.2 Manner of Payment.** Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract.

**3.3 Invoices.** Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due. Contractor shall submit invoices to the following address:

San Diego Police Department  
Fiscal Operations/Accounts Payable  
Mail Station 715  
1401 Broadway  
San Diego, CA 92101

**3.4 Annual Appropriation of Funds.** Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

### **ARTICLE 4 SUSPENSION AND TERMINATION**

**4.1 City's Right to Terminate for Convenience.** City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

**4.2 City's Right to Terminate for Default.** Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

**4.2.1** If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

**4.2.2** If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

**4.3 Termination for Bankruptcy or Assignment for the Benefit of Creditors.** If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

**4.4 Contractor's Right to Payment Following Contract Termination.**

**4.4.1 Termination for Convenience.** If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

**4.4.2 Termination for Default.** If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

**4.5 Remedies Cumulative.** City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

## **ARTICLE 5 ADDITIONAL CONTRACTOR OBLIGATIONS**

**5.1 Delay.** Unless otherwise specified herein, time is of the essence for each and every



provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

**5.1.1** If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

**5.2 Restrictions and Regulations Requiring Contract Modification.** Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

**5.3 Industry Standards.** Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

**5.4 Records Retention and Examination.** Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may

result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

**5.4.1** Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

**5.5 Quality Assurance Meetings.** Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

**5.6 Duty to Cooperate with Auditor.** The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

**5.7 Project Personnel.** Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

**5.7.1 Criminal Background Certification.** Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

**5.7.2 Photo Identification Badge.** Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

**5.8 Standards of Conduct.** Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

**5.8.1 Supervision.** Contractor shall provide adequate and competent supervision at all

times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

**5.8.2 City Premises.** Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

**5.8.3 Removal of Employees.** City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

**5.9 Licenses and Permits.** Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. City will not be responsible for any costs associated with obtaining sensor site permissions and leasing sensor site locations on private property. City will allow Contractor to place sensors on City-owned property, subject to the terms and conditions of the Master Use and Occupancy Permit attached hereto as Exhibit D; provided that City-owned property exists, in locations reasonably acceptable to the Contractor as sensor sites, and further provided, that City, in its sole discretion determines that the property is available and appropriate for such use. Also, the Contractors shall be responsible for complying with any laws or regulations requiring the use of licensed contractors to perform parts of the work.

**5.10 Contractor and Subcontractor Registration Requirements.** Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

## **ARTICLE 6 INTELLECTUAL PROPERTY RIGHTS**

**6.1 Publication.** Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City. Deliverable Materials shall not include Contractor's Software, Data, or other intellectual property as set forth in Exhibit B.

## **ARTICLE 7 INDEMNIFICATION AND INSURANCE**

**7.1 Indemnification.** To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties. Notwithstanding the foregoing, if a claim, lawsuit, or liability results from or is contributed to by the actions or omissions of City, or its employees, agents, or contractors, Contractor's obligations under this provision shall be reduced to the extent of such actions or omissions based upon the principle of comparative fault. For clarification, no works for hire are anticipated to be provided under this Agreement.

**7.2 Insurance.** Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

**7.2.1 Commercial General Liability.** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

**7.2.2 Commercial Automobile Liability.** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

**7.2.3 Workers' Compensation.** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

**7.2.4 Professional Liability (Errors and Omissions).** For consultant contracts, insurance appropriate to Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate; or provide evidence of self-insurance.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

**7.2.5 Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

**7.2.5.1 Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

**7.2.5.2 Primary Coverage.** For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

**7.2.5.3 Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

**7.2.5.4 Waiver of Subrogation.** Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

**7.3 Self Insured Retentions.** Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

**7.4 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

City will accept insurance provided by non-admitted, “surplus lines” carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

**7.5 Verification of Coverage.** Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor’s obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, in the event of a claim for which contractor is liable.

**7.6 Additional Insurance.** Contractor may obtain additional insurance not required by this Contract.

**7.7 Excess Insurance.** All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

**7.8 Subcontractors.** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

## **ARTICLE 8 CITY-MANDATED CLAUSES AND REQUIREMENTS**

**8.1 Contractor Certification of Compliance.** By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

**8.1.1 Drug-Free Workplace Certification.** Contractor shall comply with City’s Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

**8.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations:** Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City’s ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any

subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

### **8.1.3 Non-Discrimination Requirements.**

**8.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP).** Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

**8.1.3.2 Non-Discrimination Ordinance.** Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

**8.1.3.3 Compliance Investigations.** Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**8.1.4 Equal Benefits Ordinance Certification.** Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

**8.1.5 Contractor Standards.** Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**8.1.6 Noise Abatement.** Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

**8.1.7 Storm Water Pollution Prevention Program.** Contractor shall comply with the

City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

**8.1.8 Service Worker Retention Ordinance.** If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

**8.1.9 Product Endorsement.** Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

**8.1.10 Business Tax Certificate.** Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

**8.1.11 Equal Pay Ordinance.** Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the EPO.

**8.1.11.1 Contractor and Subcontract Requirement.** The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Any Contractor subject to the Equal Pay Ordinance shall require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

## **ARTICLE 9 CONFLICT OF INTEREST AND VIOLATIONS OF LAW**

**9.1 Conflict of Interest Laws.** Contractor is subject to all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et.*



*seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

**9.2 Contractor's Responsibility for Employees and Agents.** Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

**9.3 Contractor's Financial or Organizational Interests.** In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

**9.4 Certification of Non-Collusion.** Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

**9.5 Hiring City Employees.** This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

## **ARTICLE 10 DISPUTE RESOLUTION**

**10.1 Mediation.** If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

**10.2 Selection of Mediator.** A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

**10.3 Expenses.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

**10.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal

manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

**10.5 Mediation Results.** Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

## **ARTICLE 11 MISCELLANEOUS**

**11.1 Non-Assignment.** Contractor may not assign the obligations under this Contract, whether by express assignment, nor any monies due or to become due under this Contract, without City's prior written approval. This does not apply by merger or acquisition of Contractor, provided that the new entity shall comply with all of the obligations under this Contract. No assignee for the benefit of City's creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff, or any other officer of a court, or other person charged with taking custody of the City's assets or business, shall have any right to continue or to assume or assign these without ShotSpotter's express consent. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

**11.2 Independent Contractors.** Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

**11.3 Subcontractors.** All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

**11.4 Covenants and Conditions.** All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

**11.5 Compliance with Controlling Law.** Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

**11.6 Governing Law.** The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

**11.7 Venue.** The venue for any suit concerning solicitations or the Contract, the interpretation or application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

**11.8 Successors in Interest.** This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

**11.9 No Waiver.** No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

**11.10 Severability.** The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

**11.11 Drafting Ambiguities.** The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

**11.12 Amendments.** Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

**11.13 Conflicts Between Terms.** If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the

exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

**11.14 Survival of Obligations.** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

**11.15 Confidentiality of Services.** Except as otherwise provided in section 6 of Exhibit B, all services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

**11.16 Insolvency.** If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

**11.17 No Third-Party Beneficiaries.** Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

**11.18 Actions of City in its Governmental Capacity.** Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

**11.19 California Public Records Act.** Contractor acknowledges that any information submitted in this Contract is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA) applies. If the contractor submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of the proposer to provide to the

City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of the CPRA will not suffice. Rather, the contractor must provide a specific and detailed legal basis, including applicable case law, that clearly establishes the requested information is exempt from the disclosure under the CPRA. If the contractor does not provide a specific and detailed legal basis for requesting the City to withhold proposer's confidential or proprietary information at the time of proposal submittal, City will release the information as required by the CPRA and contractor will hold the City, its elected officials, officers, and employees harmless for release of this information. It will be the contractor's obligation to defend, at proposer's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at the contractor's request. Furthermore, the contractor shall indemnify and hold harmless the City, its elected officials, officers, and employees from and against any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release information requested under the CPRA which was withheld at proposer's request. Nothing in the Contract resulting from this proposal creates any obligation on the part of the City to notify the contractor or obtain the contractor's approval or consent before releasing information subject to disclosure under the CPRA.

## **ARTICLE 12 CONTRACT DOCUMENTS**

**12.1 Contract Documents.** This Agreement including its exhibits and attachments: Scope of Work; Exhibit A, ShotSpotter Respond Services Agreement; Exhibit B, Non-Disclosure Agreement; Exhibit C, Master Use and Occupancy Agreement; Exhibit D.

**12.2 Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, this Agreement is executed by City and Contractor acting by and through their authorized officers.

SHOTSPOTTER, INC.  
A Delaware Corporation

CITY OF SAN DIEGO  
A Municipal Corporation

By:  \_\_\_\_\_

By: \_\_\_\_\_

Name: Roxanne Lerner

Name: \_\_\_\_\_

Title: Contracts Manager

Director, Purchasing & Contracting

Date: July 2, 2021

Date: \_\_\_\_\_

Approved as to form this \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_.

MARA W. ELLIOTT, City Attorney

By: \_\_\_\_\_

Deputy City Attorney

\_\_\_\_\_  
Print Name

## **EXHIBIT A SCOPE OF WORK**

### **A. OVERVIEW**

ShotSpotter shall provide access to the Customer to Reviewed Alerts delivered via a password-protected internet portal and user interface supplied by SST; provide access to historical Reviewed Alerts and incident information via the Software; and other services as specified in the ShotSpotter Respond Service Agreement (Exhibit B).

### **B. REQUIREMENTS AND TASKS**

ShotSpotter, Inc. shall provide a license to use the ShotSpotter Respond Gunshot Detection, Location, and Forensic Analysis Service software, and provide operational support and maintenance for the software in accordance with the terms described in the ShotSpotter Respond Services Agreement, attached hereto as Exhibit B.

EXHIBIT B  
RESPOND SERVICES AGREEMENT



ShotSpotter, Inc.  
7979 Gateway Blvd., Suite 210  
Newark, California 94560  
+1.888.274.6877  
[info@shotspotter.com](mailto:info@shotspotter.com)  
[www.shotspotter.com](http://www.shotspotter.com)



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This ShotSpotter® Respond™ Services Agreement (this “Agreement”) is attached to and incorporated as Exhibit B into the Goods and Services Agreement entered into by and between ShotSpotter, Inc. (referred to herein as “ShotSpotter”), with offices located at 7979 Gateway Blvd., Suite 210, Newark, CA 94560 and the City of San Diego, CA (hereinafter referred to as “Customer”), with offices located at City Administration Building, 202 C St., San Diego, CA 92101, effective as of the last date of signature therein. ShotSpotter and Customer may also be referred to in this Agreement individually as a “Party” or collectively as the “Parties”.

Customer is an existing end user of ShotSpotter’s gunshot location system (“ShotSpotter® Respond™ Gunshot Detection, Location, and Forensic Analysis Service”). This Agreement and its Attachments define the services, and applicable deliverables, to be provided under this Agreement for the Customer’s ongoing use of the ShotSpotter Respond system.

In consideration of the Parties’ mutual covenants and promises set forth in this Agreement, the Parties agree as follows:

## **1. ATTACHMENTS**

The following attachments (“Attachments”) are attached to, and incorporated in this Agreement:

- A. ShotSpotter Quotation # SDPDCA062121B
- B. Service Level Agreement

## **2. DEFINITIONS**

All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth below:

- A. Insight means the internet portal to which Customer will have access to Reviewed Alerts.
- B. Confidential Information means that information designated by either Party as confidential or proprietary as further defined in Section 6 of this Agreement.
- C. Coverage Area means the area in square miles covered by the Services as set forth in Attachment A and any subsequent amendments thereto.
- D. Data means all data created, generated, modified, compiled, stored, kept, or displayed by ShotSpotter in performance of the Subscription Services, including the Software.
- E. Reviewed Alerts means the data reviewed by ShotSpotter’s incident review staff related to gunfire incidents detected by the ShotSpotter Gunshot Detection, Location, and Forensic Analysis Service.
- F. ShotSpotter Respond System means the ShotSpotter Respond Gunshot Detection, Location, and Forensic Analysis Service provided on a subscription basis under this Agreement.
- G. Software means the ShotSpotter Respond Gunshot Detection, Location, and Forensic Analysis Service, Reviewed Alerts, ShotSpotter Respond™, and ShotSpotter Dispatch™ and ShotSpotter® Insight applications to which Customer will have access under this Agreement on a subscription basis. The term Software shall also mean any new applications supplemental to the Subscription

Services provided by ShotSpotter to Customer subsequent to the execution date of this Agreement, and if purchased by Customer, the ShotSpotter API Subscription License.

- H. Subscription Services means the services provided to Customer on a subscription basis to access, and ShotSpotter's maintenance of, the Software.
- I. System means collectively the Software and Subscription Services provided under this Agreement.

### **3. SUBSCRIPTION SERVICES**

- A. ShotSpotter has installed the ShotSpotter Respond System in the Coverage Area specified in Attachment A attached to this Agreement. ShotSpotter will host the Subscription Services and may update the functionality and Software of the Subscription Services from time to time at its sole discretion and in accordance with this Agreement. Updates or Upgrades to the ShotSpotter Respond System shall be included in the subscription fee at no additional costs.
- B. The ShotSpotter Respond System acoustic Sensor may use wired, wireless, or cellular wireless communications which necessitates the existence of a real-time data communications channel from each Sensor to the ShotSpotter hosted servers via a commercial carrier. The unavailability or deterioration of the quality of such wired, wireless, or wireless cellular communications may impact the ability of ShotSpotter to provide the Subscription Services. In such circumstances ShotSpotter will use commercially reasonable efforts to obtain alternate wired or wireless cellular communications or adjust the coverage area as necessary. In the event ShotSpotter is unable to do so, ShotSpotter will terminate the Subscription Services and refund a pro-rata portion of the annual Subscription Services fee to Customer.
- C. ShotSpotter will provide Customer with user documentation, online help, written or recorded video training material, and other applicable documentation (as available).
- D. ShotSpotter will provide reasonable efforts to respond via email to requests for support relating to incident classification as defined in the Support Level Matrix provided in Attachment B.
- E. During the term of this Agreement, ShotSpotter will provide real-time gunfire analysis and alert services. After an explosive (or impulsive) sound triggers enough ShotSpotter Sensors that an incident is detected and located, audio from the incident is sent to the ShotSpotter Incident Review Center (IRC) via secure, high-speed network connections for real-time qualification. Within seconds, a ShotSpotter professional reviewer analyzes audio data and recordings to confirm gunfire or explosions. The qualified alert is then sent directly to the Customer's dispatch center, PSAP, mobile/patrol officers, and any other relevant safety or security personnel, as determined by the Customer. ShotSpotter's IRC will review gunfire incidents as further defined in Attachment B.
- F. The Subscription Services provided under this Agreement shall consist of (i) providing access to the Customer of Reviewed Alerts delivered via the Insight password-protected internet portal and user interface supplied by ShotSpotter; (ii) providing Customer access to historical Reviewed Alerts and incident information via the Software; and (iii) other services as specified in this Agreement and its Attachments.

- G. ShotSpotter will use commercially reasonable efforts to respond to support requests as set forth in the Support Level Matrix provided in Attachment B. These requests may be made to ShotSpotter through one of the following methods: 1) email to [support@shotspotter.com](mailto:support@shotspotter.com); 2) Live Chat through our ShotSpotter applications; 3) A phone call to our Customer Support organization at 888.274.6877, option 4. These are the only methods ShotSpotter will receive and respond to support requests.

A Tier 1 (as defined in the Support Matrix in Attachment B) ShotSpotter Customer Support specialist will be responsible for receiving Customer reports of missed incidents, or errors in the Subscription Services, and, to the extent practicable over email or telephone, making commercially reasonable efforts to assist the Customer in resolving the Customer's reported problems. In the event the problem cannot be resolved within 24 hours, requiring further research and troubleshooting, ShotSpotter will use commercially reasonable efforts to resolve the issue within seventy-two (72) hours of receipt of the report. In the event that the ShotSpotter service is fully nonfunctional, and it is not due to power outage or other reasons that are outside of ShotSpotter's control, ShotSpotter will work continuously to restore functionality of the Subscription Services in accordance with the standard ShotSpotter user documentation provided with the Subscription Services as soon as reasonably possible, and no later than seventy-two (72) hours of receipt of the report.

#### H. FORENSIC REPORTS.

- i. Investigative Lead Summary ("ILS"). ShotSpotter provides an on-demand report available through the ShotSpotter Respond Application. The Investigative Lead Summary (ILS) provides useful details about the approximate location, timing, and sequence of each shot fired during an incident. The ILS is very valuable on scene, helping law enforcement find shell casings, confirm witness accounts, and identify suspects. ILS reports are available immediately after an incident occurs via the mobile, web, or desktop ShotSpotter Respond application (machine-generated). The ILS is not a court-admissible document.
- ii. Detailed Forensic Report ("DFR"). If requested by Customer, ShotSpotter will provide a DFR for any ShotSpotter-detected incidents, including Reviewed Alerts. The DFR is intended to be a court-admissible document used by attorneys as part of a court case for the exact, verified timing, sequence and location of each shot fired. Secondly, the DFR is available for use by law enforcement to obtain a search warrant or to investigate an Officer Involved Shooting.

DFRs must be requested in writing and addressed to the ShotSpotter Customer Support Department. Requests may be submitted via the Forensics Services page under the Law Enforcement tab on ShotSpotter's website ([www.shotspotter.com](http://www.shotspotter.com)). ShotSpotter will use commercially reasonable efforts to provide a DFR within ten (10) business days of receipt of the request.

#### I. EXPERT WITNESS SERVICES.

ShotSpotter offers reasonable expert witness services. If requested to provide such services, ShotSpotter will invoice the Customer for the number of hours expended to prepare for and provide expert witness testimony, and actual travel expenses, upon completion of the services. Customer understands that ShotSpotter undertakes to provide individuals whose qualifications are sufficient

for such services, but does not warrant that any person or his or her opinion will be accepted by every court. ShotSpotter requires at least fourteen (14) days prior notice of such a requirement in writing from the Customer. Customer must include dates, times, specific locations, and a point of contact for ShotSpotter personnel. Due to the nature of legal proceedings, ShotSpotter cannot guarantee that its services described in this section shall produce the outcome, legal or otherwise, which Customer desires. Payment for expert witness services described shall be due and payable when services are rendered regardless of the outcome of the proceedings.

#### 4. INITIAL TERM AND RENEWAL

The initial term and optional renewals are set forth in the Article 1 of the Good and Services Agreement between the City of San Diego and ShotSpotter, Inc. to which this Agreement is incorporated as Exhibit B.

#### 5. LICENSE, OWNERSHIP, AND DATA RIGHTS

In consideration for and subject to the payment of the annual Subscription Services fees as set forth in Attachment A, Customer is granted a non-transferrable, non-exclusive and terminable license ("License") to use the Subscription Services and Data as set forth in this Section 5. Please read the terms and conditions of this Agreement carefully. By using the Subscription Services and Data, you agree to be bound by the terms and conditions of this Agreement. If you do not agree to these terms, you must notify ShotSpotter and discontinue any use of the Subscription Services and Data.

##### A. Rights in Data.

For the purposes of this Agreement, "Data" is defined as data, information, and electronic files created, generated, modified, compiled, displayed, stored or kept in the course of providing the Subscription Services, including, without limitation, information in Reviewed Alerts accessible through the Service and/or Software.

ShotSpotter shall own and have the unrestricted right to use the Data for internal purposes such as research or product development. ShotSpotter may provide, license, or sell Data on an aggregated basis to third parties (excluding press or media) to be used for research or analytical purposes, or for law enforcement and/or security purposes.

ShotSpotter will not release or disseminate to any person or entity Data related to or consisting of specific forensic or law enforcement sensitive incident information pertaining to any active inquiry, investigation, or prosecution, unless in response to a valid order or subpoena issued by a court or other governmental body, or as otherwise required by law. ShotSpotter will not release, sell, license, or otherwise distribute the gunfire alert Data to the press or media without the prior express written consent of an authorized representative of the Customer.

Customer shall have the unrestricted right to download, make copies of, distribute, and use the Data within its own organization, exclusively for its own internal purposes, and for purposes of detecting and locating gunfire, routine archival recordkeeping, evidence preservation, and investigative, or evidentiary, and prosecutorial purposes. Customer shall not provide to, license the use of, or sell Data to any third parties, which restriction will not pertain to the collaboration with other law enforcement agencies for the purposes of investigating and prosecuting crimes detected by the ShotSpotter systems.

**B. License and Restrictions.**

Software and Subscription Services. The Software is the proprietary product of ShotSpotter, licensed to Customer on an annual subscription basis. The ShotSpotter Software may incorporate components supplied to ShotSpotter under license by third-party suppliers, and may be protected by United States patent, trade secret, copyright law and international treaty provisions. All such rights in and to the Software and Subscription Services any part thereof is the property of ShotSpotter or, if applicable, its suppliers. All right and title to the ShotSpotter computer programs, including, but not limited to related documentation, technology, know-how and processes embodied in or made available to Customer in connection with the Subscription Services, patent rights, copyrights, trade secret rights, trademarks, and services marks remain with ShotSpotter. Customer may not make any copies of the written materials or documentation that accompany any component of the Software, or use them, or any other information concerning the Subscription Services that ShotSpotter has designated as confidential, for any purpose other than bona fide use of the Subscription Services or Software for in accordance with the terms of this Agreement, nor allow anyone else to do so. Customer shall not: (i) modify, adapt, alter, translate, copy, perform, or display (publicly or otherwise) or create compilations, derivative, new, or other works based, in whole or in part, on the Software, or on the Subscription Services; (ii) merge, combine, integrate, or bundle the Software, in whole or in part, with other software, hardware, data, devices, systems, technologies, products, services, functions, or capabilities; (iii) transfer, distribute, make available the Subscription Services, or Software to any person other than Customer; or (iv) sell, resell, sublicense, lease, rent, or loan the Subscription Services or Software, in whole or in part. No component of the Subscription Services, or Software may be used to operate a service bureau, rental or time-sharing arrangement.

Data. Customer's rights to use the Data are defined in paragraph A of this section 5.

Nothing in this Agreement shall be construed as granting any right or title to the Software, Data or any component thereof, or any other intellectual property of ShotSpotter or its suppliers to Customer.

Customer shall not alter, remove or obscure any copyright, patent, trademarks, confidential, proprietary, or restrictive notices or markings on any component of the Subscription Services, Software or any documentation.

Customer acknowledges that the ShotSpotter System has been determined by the United States Department of State to be a controlled commodity, software and/or technology subject to the United States Export Administration Regulations of the U.S. Department of Commerce. Customer is specifically prohibited from the export, or re-export, transfer, consignment, shipment, delivery, downloading, uploading, or transmitting in any form, any ShotSpotter Software, Data, documentation, or any component thereof or underlying information or technology related thereto, to any third party, government, or country for any end uses except in strict compliance with applicable U.S. export controls laws, and only with the express prior written agreement of ShotSpotter. In the event that such written agreement is provided, Customer shall be responsible for complying with all applicable export laws and regulations of the United States and destination country, including, but not limited to the United States Export Administration Regulations of the U.S. Department of Commerce, including the sanctions laws administered by the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC), the U.S. Anti-Boycott regulations, and any



applicable laws of Customer's country. In this respect, no resale, transfer, or re-export of the ShotSpotter Respond System or any ShotSpotter Respond System component exported to Customer pursuant to a license from the U.S. Department of Commerce may be resold, transferred, or reported without prior authorization by the U.S. Government. Customer agrees not to export, re-export or engage in any "deemed export," or to transfer or deliver, or to disclose or furnish, to any foreign (non- U.S.) government, foreign (non-U.S.) person or third party, or to any U.S. person or entity, any of the ShotSpotter Respond System, or ShotSpotter Respond System components, Data, Software, Services, or any technical data or output data or direct data product thereof, or any service related thereto, in violation of any such restrictions, laws or regulations, or without all necessary registrations, licenses and or approvals. Customer shall bear all expenses relating to any necessary registrations, licenses or approvals.

Use, duplication, or disclosure by applicable U.S. government agencies is subject to restrictions as set forth in the provisions of DFARS 48 CFR 252.227-7013 or FAR 48 CFR 52.227-14, as applicable.

In addition to the foregoing, Customer shall not disclose, discuss, download, ship, transfer, deliver, furnish, or otherwise export or re-export any such item(s) to or through: (a) any person or entity on the U.S Department of Commerce Bureau of Industry and Security's List of Denied Persons or Bureau of Export Administration's anti-proliferation Entity List; (b) any person on the U.S. Department of State's List of Debarred Parties; (c) any person or entity on the U.S. Treasury Department Office of Foreign Asset Control's List of Specially Designated Nationals and Blocked Persons; or (d) any third party or for any end-use prohibited by law or regulation, as any and all of the same may be amended from time to time, or any successor thereto.

C. Termination.

Customer agrees that its right to use the Subscription Services, Software and Data will terminate following thirty (30) day's prior written notice due to a material breach of the terms of this Agreement. In the event of a breach of ShotSpotter's intellectual property rights, ShotSpotter at its sole discretion may terminate this Agreement immediately upon written notice to Customer. In the event of termination, Customer's access to the Data and Software will be terminated, and ShotSpotter will cease delivering Reviewed Alerts, and disable Customer's access to the Data. Customer agrees that ShotSpotter shall not be liable to Customer nor to any third party for any suspension of the Subscription Services resulting from Customer's nonpayment of the Subscription Services fees or termination for material breach as described in this section.

D. Modification to, or Discontinuation of the Subscription Services.

Upon reasonable notice to Customer, ShotSpotter reserves the right at its discretion to modify, temporarily or permanently, the Subscription Services (or any part thereof). In the event that ShotSpotter modifies the Subscription Services in a manner which removes or disables a feature or functionality on which Customer materially relies, ShotSpotter, at Customer's request, shall use commercially reasonable efforts to restore such functionality to Customer. In the event that ShotSpotter is unable to substantially restore such functionality, Customer shall have the right to terminate the Agreement and receive a pro-rata refund of the annual Subscription Services fees paid under the Agreement for the subscription term in which this Agreement is terminated. Customer acknowledges that ShotSpotter reserves the right to discontinue offering the

Subscription Services at the conclusion of Customer's then current term. Customer agrees that ShotSpotter shall not be liable to Customer or to any third party for any modification of the Subscription Services as described in this section.

E. New Applications.

From time to time, at ShotSpotter's discretion, ShotSpotter may release to its customer base, new applications supplemental to the Subscription Services. Customer's use of such new applications shall be subject to the license, warranty, intellectual property, and support terms of this Agreement. Prior to general release, ShotSpotter may request Customer to act as a pre-release test site for new applications, or major upgrades. Provided that Customer agrees in writing to such request, ShotSpotter will provide a pre-release package explaining the details and requirements for Customer's participation.

F. No Use by Third Parties.

Use by anyone other than Customer of the Subscription Services, documentation, and Data is prohibited, unless pursuant to a valid assignment of this Agreement as set forth in the Goods and Services Agreement.

## 6. CONFIDENTIALITY AND PROPRIETARY RIGHTS

A. ShotSpotter Privacy Policy.

ShotSpotter has structured its technology, processes and policies in such a way as to minimize the risk of privacy infringements from audio surveillance while still delivering important public safety benefits to its customers. These efforts to maintain privacy include the following:

- 1) ShotSpotter will not provide extended audio to customers beyond the audio snippet (1 second of ambient noise prior to a gunshot, the gunshot audio itself, and 1 second after the incident). ShotSpotter will vigorously resist any subpoena or court order for extended audio that goes beyond an audio snippet.
- 2) ShotSpotter will not provide a list or database of the precise location of Sensors to police or the public if requested and will challenge any subpoenas for this location data
- 3) ShotSpotter Confidential Information.

B. ShotSpotter Confidential Information.

Customer acknowledges and agrees that the source code, technology, and internal structure of the Software, Data, and Subscription Services, as well as documentation, operations manual(s) and training material(s), are the confidential information and proprietary trade secrets of ShotSpotter, the value of which would be destroyed by disclosure to the public. Use by anyone other than Customer of the Subscription Services, documentation, and Data is prohibited, unless pursuant to a valid assignment under this Agreement. Unless prohibited by applicable law, the terms and conditions of this Agreement, including pricing and payment terms shall also be treated as ShotSpotter's confidential information. Customer shall not disassemble, decompile, or otherwise reverse engineer or attempt to reconstruct, derive, or discover any source code, underlying ideas, algorithms, formulae, routines, file formats, data structures, programming, routines, interoperability interfaces, drawings, or plans from the Software, or any data or information created, compiled,



displayed, or accessible through the Subscription Services, in whole or in part. Customer agrees during the term of this Agreement, and thereafter, to hold the confidential information and proprietary trade secrets of ShotSpotter in strict confidence and to not permit any person or entity to obtain access to it except as required for the Customer's exercise of the license rights granted under this Agreement. Nothing in this Agreement is intended to or shall limit any rights or remedies under applicable law relating to trade secrets, including the Uniform Trade Secrets Act as enacted in applicable jurisdictions.

C. Obligations of the Parties.

The receiving Party's ("Recipient") obligations under this section shall not apply to any of the disclosing Party's ("Discloser") Confidential Information that Recipient can document: (a) was in the public domain at or subsequent to the time such Confidential Information was communicated to Recipient by Discloser through no fault of Recipient; (b) was rightfully in Recipient's possession free of any obligation of confidence at or subsequent to the time such Confidential Information was communicated to Recipient by such Discloser; (c) was developed by employees or agents of Recipient independently of and without reference to any of Discloser's Confidential Information; or (d) was communicated by Discloser to an unaffiliated third party free of any obligation of confidence. A disclosure by Recipient of any Discloser Confidential Information (a) in response to a valid order by a court or other governmental body; (b) as otherwise required by law; or (c) necessary to establish the rights of either party under this Agreement shall not be considered to be a breach of this Agreement by the Recipient; provided, however, that Recipient shall provide prompt prior written notice thereof to the Discloser to enable Discloser to seek a protective order or otherwise prevent such disclosure. The Recipient shall use reasonable controls to protect the confidentiality of and restrict access to all Confidential Information of the Discloser to those persons having a specific need to know for the purpose of performing the Recipient's obligations under this Agreement. The Recipient shall use controls no less protective than Recipient uses to secure and protect its own confidential, but not "Classified" or otherwise Government-legended, information. Upon termination of this Agreement the Recipient, as directed by the Discloser, shall either return the Discloser's Confidential Information, or destroy all copies thereof and verify such destruction in writing to the Discloser.

Unless the Recipient obtains prior written consent from the Discloser, the Recipient agrees that it will not reproduce, use for purposes other than those expressly permitted in this Agreement, disclose, sell, license, afford access to, distribute, or disseminate any information designated by the Discloser as confidential.

## 7. LIMITED WARRANTIES

ShotSpotter warrants that the Software will function in substantial conformity with the ShotSpotter documentation accompanying the Software and Subscription Services. The Software covered under this warranty consists exclusively of the ShotSpotter Dispatch, ShotSpotter Respond, and ShotSpotter Insight applications and user interface made available to the Customer under this Agreement. ShotSpotter will provide support services as defined in Attachment B Service Level Agreement.

- A. ShotSpotter further warrants that the Subscription Services, Data, and Software shall be free of viruses, Trojan horses, worms, spyware, or other malicious code or components.

- B. The Subscription Services are not designed, sold, or intended to be used to detect, intercept, transmit, or record oral or other communications of any kind. ShotSpotter cannot control how the Subscription Services are used, and, accordingly, ShotSpotter does not warrant or represent, expressly or implicitly, that use of the Subscription Services will comply or conform to the requirements of federal, state, or local statutes, ordinances, and laws, or that use of the Subscription Services will not violate the privacy rights of third parties. Customer shall be solely responsible for using the Subscription Services in full compliance with applicable law and the rights of third persons.
- C. ShotSpotter does not warrant or represent, expressly or implicitly, that the Software or Subscription Services or its use will: result in the prevention of crime, apprehension or conviction of any perpetrator of any crime, or detection of any criminal; prevent any loss, death, injury, or damage to property due to the discharge of a firearm or other weapon; in all cases result in a Reviewed Alert for all firearm discharges within the designated coverage area; or that the ShotSpotter-supplied network will remain in operation at all times or under all conditions.
- D. ShotSpotter expressly disclaims, and does not undertake or assume any duty, obligation, or responsibility for any decisions, actions, reactions, responses, failure to act, or inaction, by Customer as a result of or in reliance on, in whole or in part, any Subscription Services or Reviewed Alerts provided by ShotSpotter, or for any consequences or outcomes, including any death, injury, or loss or damage to any property, arising from or caused by any such decisions, actions, reactions, responses, failure to act, or inaction. It shall be the sole and exclusive responsibility of the Customer to determine appropriate decisions, actions, reactions, or responses, including whether or not to dispatch emergency responder resources. The Customer hereby expressly assumes all risks and liability associated with any and all action, reaction, response, and dispatch decisions, and for all consequences and outcomes arising from or caused by any decisions made or not made by the Customer in reliance, in whole or in part, on any Subscription Services provided by ShotSpotter, including any death, injury, or loss or damage to any property.
- E. Any and all warranties, express or implied, of fitness for high-risk purposes requiring fail-safe performance are hereby expressly disclaimed.
- F. The Parties acknowledge and agree that the Subscription Services is not a consumer good, and is not intended for sale to or use by or for personal, family, or household use.

**EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7, SHOTSPOTTER MAKES AND CUSTOMER RECEIVES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF NON-INFRINGEMENT, QUALITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**8. CUSTOMER OBLIGATIONS.**

Customer acknowledges and agrees that ShotSpotter's duties, including warranty obligations, and ability to perform its obligations to Customer under this Agreement shall be predicated and conditioned upon Customer's timely performance of and compliance with Customer's obligations hereunder, including, but not limited to:

- A. Customer agrees to pay all sums due under this Agreement when they are due pursuant to the payment terms in Attachment A.

Customer's address for invoicing:

San Diego Police Department

Attn: Sergeant Ron Philhower

1401 Broadway

San Diego, CA 92101

- B. Customer agrees to use reasonable efforts to timely perform and comply with all of Customer's obligations allocated to Customer under this Agreement.
- C. Customer shall not permit any alteration, modification, substitution, or supplementation of the ShotSpotter Subscription Services or web portal, or the combining, connection, merging, bundling, or integration of the ShotSpotter Subscription Services or web portal into or with any other system, equipment, hardware, software, technology, function, or capability, without ShotSpotter's express prior written consent.
- D. Unless otherwise expressly agreed in advance in writing by ShotSpotter, Customer shall not authorize or appoint any contractors, subcontractors, original equipment manufacturers, value added integrators, systems integrators, or other third parties to operate, or have access to any part of the Subscription Services.
- E. In order to use the Subscription Services, Customer must have and maintain access to the World Wide Web to enable a secure https connection from the Customer's workstation(s) to ShotSpotter's hosted services, either directly or through devices that access Web-based content. Customer must also provide all equipment necessary to make such (and maintain such) connection.
- F. ShotSpotter will assist the Customer in initially setting up passwords and usernames for Customer's employees, agents, or representatives to whom Customer designates access to the Subscription Services ("Authorized Users"). Thereafter, Customer shall be responsible for assigning passwords and usernames for its Authorized Users. Customer shall be responsible for maintaining the confidentiality and use of Customer's password and usernames and shall not allow passwords and/or usernames to be shared by Authorized Users; nor shall Customer permit any unauthorized users to access the Subscription Services.
- G. Customer shall comply with all applicable laws, rules and regulations relating to the goods and services provided hereunder.

## 9. INTELLECTUAL PROPERTY INFRINGEMENT

ShotSpotter will, at its expense, defend and indemnify Customer, its officers and employees from and against losses, suits, damages, liability, and expenses (including reasonable attorney fees) arising out of a claim asserted in a lawsuit or action against the Customer by a third party unrelated to the Customer, in which such third party asserts a claim that the Subscription Services and/or Software, when used in accordance with ShotSpotter's user documentation, infringes any United States patent which was issued by the U.S. Patent and Trademark Office, or United States copyright which was registered by the U.S. Copyright Office, as of the effective date of Customer's agreement to license the ShotSpotter Respond System (collectively "Action"), provided that Customer provides ShotSpotter with reasonably prompt notice of any such Action, or circumstances of which Customer becomes aware that could reasonably be expected to lead to such Action including but not limited to any cease and desist demands or warnings, and further provided that Customer cooperates with ShotSpotter and its defense counsel in the investigation and defense of such Action.

ShotSpotter shall have the right to choose counsel to defend such suit and/or action, and to control the settlement (including determining the terms and conditions of settlement) and the defense thereof. Customer may participate in the defense of such action at its own expense.

This Section 9 shall not apply and ShotSpotter shall have no obligation to defend and indemnify Customer in the event the Customer or a third party modifies, alters, substitutes, or supplements any of the Subscription Services, or Software, or to the extent that the claim of infringement arises from or relates to the integration, bundling, merger, or combination of any of the same with other hardware, software, systems, technologies, or components, functions, capabilities, or applications not licensed by ShotSpotter as part of the Subscription Services, nor shall it apply to the extent that the claim of infringement arises from or relates to meeting or conforming to any instruction, design, direction, or specification furnished by the Customer, nor to the extent that the Subscription Services or Software are used for or in connection with any purpose, application, or function other than detecting and locating gunshots exclusively through acoustic means.

If, in ShotSpotter's opinion, the Subscription Services, or Software may, or is likely to become, the subject of such a suit or action, does become the subject of a claim asserted against Customer in a lawsuit which ShotSpotter is or may be obliged to defend under this section, or is determined to infringe the foregoing patents or copyrights of another in a final, non-appealable judgment subject to ShotSpotter's obligations under this section, then ShotSpotter may in full and final satisfaction of any and all of its obligations under this section, at its option: (1) procure for Customer the right to continue using the affected Subscription Services or Software, (2) modify or replace such Subscription Services or Software to make it or them non-infringing, or (3) refund to Customer a pro-rata portion of the annual Subscription Services fees paid for the Subscription Services for the term in which the Agreement is terminated.

**This Section 9 states the entire liability of ShotSpotter and is Customer's exclusive remedy for or relating to infringement or claims or allegations of infringement of any patent, copyright, or other intellectual property rights in or to the Subscription Services, the ShotSpotter Gunshot Detection, Location and Forensic Analysis Service components, and Software. This section is in lieu of and replaces any other expressed, implied, or statutory warranty against infringement of any and all intellectual property rights.**

## **10. INDEMNIFICATION AND LIMITATION OF LIABILITY**

Except for its Intellectual Property infringement indemnity obligations under Section 9 of this Agreement, ShotSpotter's cumulative liability for all losses, claims, suits, controversies, breaches or damages for any cause whatsoever arising out of or related to this Agreement, whether in contract, tort, by way of indemnification or under statute, and regardless of the form of action or legal theory shall not exceed two (2) times the amount paid to ShotSpotter under this Agreement, or the amount of insurance maintained by ShotSpotter available to cover the loss, whichever is greater. The foregoing limitations shall apply without regard to any failure of essential purpose of any remedies given herein.

In no event shall either Party, or any of its affiliates or any of its/their respective directors, officers, members, attorneys, employees, or agents, be liable to the other Party under any legal or equitable theory or claim, for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, indirect, incidental, or consequential damages, each of which is hereby excluded by agreement of the Parties, regardless of whether such damages were foreseeable or whether any Party or any entity has been advised of the possibility of such damages.

## **11. TAXES**

Unless otherwise included as a line item in Attachment A, the fees due under this Agreement exclude any sales, use, value added or similar taxes that may be imposed in connection with this Agreement. Customer agrees that it shall be solely responsible for payment, or reimbursement to ShotSpotter as applicable, of all sales, use, value added or similar taxes imposed upon this Agreement by any level of government, whether due at the time of sale or asserted later as a result of audit of the financial records of either Customer or ShotSpotter. If exempt from such taxes, Customer shall provide to ShotSpotter written evidence of such exemption.

## **12. NOTICES**

Any notice or other communication required or permitted to be given under this Agreement shall be in writing delivered to the address set forth in this Agreement by certified mail return receipt; overnight delivery services; or delivered in person. A Party's address may be changed by written notice to the other Party.

## **13. FORCE MAJEURE**

In no event shall ShotSpotter be liable for any delay or default in its performance of any obligation under this Agreement caused directly or indirectly by an act or omission of Customer, or persons acting under its direction and/or control, fire, flood, act of God, an act or omission of civil or military authority of a state or nation, strike, lockout, or other labor disputes, inability to secure, delay in securing, or shortage of labor, materials, supplies, transportation, or energy, failures, outages or denial of services of wireless, power, telecommunications, or computer networks, acts of terrorism, sabotage, vandalism, hacking, natural disaster or emergency, war, riot, embargo, or civil disturbance, breakdown or destruction of plant or equipment, or arising from any cause whatsoever beyond ShotSpotter's reasonable control. At ShotSpotter's option and following notice to Customer, any of the foregoing causes shall be deemed to suspend such obligations of ShotSpotter so long as any such cause shall prevent or delay performance, and ShotSpotter agrees to make and Customer agrees to accept performance of such obligations whenever such cause has been remedied.

#### **14. GOVERNING LAW**

The validity, performance, and construction of this Agreement shall be governed by the laws of the state of California, without giving effect to the conflict of law principles thereof. The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed and shall not apply

#### **15. NO WAIVER**

No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by both Parties. Any consent by either Party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other, different, prior, or subsequent breach.

The failure of either Party to enforce at any time any of the provisions of this Agreement shall not constitute a present or future waiver of any such provisions or the right of either Party to enforce each and every provision.

#### **16. SEVERABILITY**

If any term, clause, sentence, paragraph, article, subsection, section, provision, condition or covenant of this Agreement is held to be invalid or unenforceable, for any reason, it shall not affect, impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the term, clause, sentence, paragraph, article, subsection, section, provision, condition or covenant of this Agreement so adjudged to be invalid or unenforceable.

#### **17. ASSIGNMENTS**

The Agreement may not be assigned or transferred by either Party, nor any of the rights granted herein, in whole or in part by operation of law or otherwise without the other Party's express prior written consent, which shall not be unreasonably withheld provided however that ShotSpotter may assign or transfer this Agreement and/or ShotSpotter's rights and obligations hereunder, in-whole or in part, in the event of a merger or acquisition of all or substantially all of ShotSpotter's assets. No assignee for the benefit of Customer's creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of the court or other person charged with taking custody of Customer's assets or business shall have any right to continue or to assume or to assign these without ShotSpotter's express consent.

#### **18. GENERAL PROVISIONS**

- A. The provisions of this Agreement shall not be construed in favor of or against either Party because that Party or its legal counsel drafted this Agreement, but shall be construed as if all Parties prepared this Agreement.
- B. This Agreement is made for the benefit of the Parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the Parties to terminate, rescind, or agree to any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.



**ATTACHMENT A – SHOTSPOTTER QUOTATION**


# Quotation

7979 Gateway Blvd., Suite 210  
 Newark, CA 94560-1156  
 Phone (888) 274-6877 Fax (650) 887-2106

**DATE** 6/21/2021

**Quotation #** SDPDCA062121B

**Customer ID** San Diego PD

**Quotation For:**

Sgt. Ron Philhower  
 San Diego Police Department  
 1401 Broadway  
 San Diego, CA 92101

*Quotation valid until: 9/22/2021*

*Prepared by: K Isotalo*

**Comments or Special Instructions:** Renewal of Annual Subscription Services for September 23, 2021 through June 30, 2022 (prorated to coincide with the City's fiscal year) and for July 1, 2022 through June 30, 2026 for the 3.62 mi<sup>2</sup> coverage area. These services will be delivered according to the terms and conditions contained in the ShotSpotter Service Agreement to which this quote will be attached as Exhibit A. Per the City's request, ShotSpotter will bill this subscription renewal on a monthly basis.

SALESPERSON	P.O. NUMBER	SHIP DATE	SHIP VIA	TERMS	
Greene			Electronic	Net 30	
QUANTITY (mi²)	DESCRIPTION		UNIT PRICE (per mi²)	TAXABLE?	AMOUNT
3.62	ShotSpotter Annual Subscription Services for 9/23/2021 to 9/30/2021.		\$65,000.00		\$4,902.08
3.62	ShotSpotter Annual Subscription Services for 10/1/2021 to 10/31/2021.		\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 11/1/2021 to 11/30/2021.		\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 12/1/2021 to 12/31/2021.		\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 1/1/2022 to 1/31/2022.		\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 2/1/2022 to 2/28/2022.		\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 3/1/2022 to 3/31/2022.		\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 4/1/2022 to 4/30/2022.		\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 5/1/2022 to 5/31/2022.		\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 6/1/2022 to 6/30/2022.		\$65,000.00		\$19,608.33
PRORATED TERM SUBTOTAL:					\$181,377.05

QUANTITY (mi²)	DESCRIPTION	UNIT PRICE (per mi²)	TAXABLE?	AMOUNT
3.62	ShotSpotter Annual Subscription Services for 7/1/2022 to 7/31/2022.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 8/1/2022 to 8/31/2022.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 9/1/2022 to 9/30/2022.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 10/1/2022 to 10/31/2022.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 11/1/2022 to 11/30/2022.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 12/1/2022 to 12/31/2022.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 1/1/2023 to 1/31/2023.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 2/1/2023 to 2/28/2023.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 3/1/2023 to 3/31/2023.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 4/1/2023 to 4/30/2023.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 5/1/2023 to 5/31/2023.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 6/1/2023 to 6/30/2023.	\$65,000.00		\$19,608.33
OPTION YEAR ONE SUBTOTAL:				\$235,300.00
3.62	ShotSpotter Annual Subscription Services for 7/1/2023 to 7/31/2023.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 8/1/2023 to 8/31/2023.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 9/1/2023 to 9/30/2023.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 10/1/2023 to 10/31/2023.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 11/1/2023 to 11/30/2023.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 12/1/2023 to 12/31/2023.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 1/1/2024 to 1/31/2024.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 2/1/2024 to 2/28/2024.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 3/1/2024 to 3/31/2024.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 4/1/2024 to 4/30/2024.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 5/1/2024 to 5/31/2024.	\$65,000.00		\$19,608.33
3.62	ShotSpotter Annual Subscription Services for 6/1/2024 to 6/30/2024.	\$65,000.00		\$19,608.33
OPTION YEAR TWO SUBTOTAL:				\$235,300.00



QUANTITY (mi <sup>2</sup> )	DESCRIPTION	UNIT PRICE (per mi <sup>2</sup> )	TAXABLE?	AMOUNT
3.62	ShotSpotter Annual Subscription Services for 7/1/2024 to 7/31/2024.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 8/1/2024 to 8/31/2024.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 9/1/2024 to 9/30/2024.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 10/1/2024 to 10/31/2024.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 11/1/2024 to 11/30/2024.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 12/1/2024 to 12/31/2024.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 1/1/2025 to 1/31/2025.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 2/1/2025 to 2/28/2025.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 3/1/2025 to 3/31/2025.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 4/1/2025 to 4/30/2025.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 5/1/2025 to 5/31/2025.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 6/1/2025 to 6/30/2025.	\$68,250.00		\$20,588.75
OPTION YEAR THREE SUBTOTAL:				\$247,065.00

QUANTITY (mi <sup>2</sup> )	DESCRIPTION	UNIT PRICE (per mi <sup>2</sup> )	TAXABLE?	AMOUNT
3.62	ShotSpotter Annual Subscription Services for 7/1/2025 to 7/31/2025.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 8/1/2025 to 8/31/2025.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 9/1/2025 to 9/30/2025.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 10/1/2025 to 10/31/2025.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 11/1/2025 to 11/30/2025.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 12/1/2025 to 12/31/2025.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 1/1/2026 to 1/31/2026.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 2/1/2026 to 2/28/2026.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 3/1/2026 to 3/31/2026.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 4/1/2026 to 4/30/2026.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 5/1/2026 to 5/31/2026.	\$68,250.00		\$20,588.75
3.62	ShotSpotter Annual Subscription Services for 6/1/2026 to 6/30/2026.	\$68,250.00		\$20,588.75
<b>OPTION YEAR FOUR SUBTOTAL:</b>				<b>\$247,065.00</b>
SUBTOTAL				\$1,146,107.05
TAX RATE				
SALES TAX				
OTHER				-
<b>TOTAL</b>				<b>\$1,146,107.05</b>

Please indicate your acceptance of this quote by issuing a Purchase Order referencing the Quotation # above. ShotSpotter will issue an invoice once we receive the PO.

If you have any questions concerning this quotation, please contact  
Karen Isotalo - Vice President, Sales Operations at 510-298-8668 or [kisotalo@shotspotter.com](mailto:kisotalo@shotspotter.com)

**THANK YOU FOR YOUR BUSINESS!**

**ATTACHMENT B – SERVICE LEVEL AGREEMENT****ShotSpotter Respond Gunshot Location System****Reviewed Alert Service Levels****Summary**

Under the terms and conditions of the ShotSpotter Services Agreement between ShotSpotter, Inc. (“ShotSpotter”) and Customer, ShotSpotter commits to meet or exceed the following Service Level Agreement (SLA) standards as it provides its ShotSpotter Gunshot Location Services<sup>1</sup>:

Service	SLA and Measurement
Gunshot Detection & Location	90% of unsuppressed, outdoor gunfire incidents, using standard, commercially available rounds greater than .25 caliber, inside the Coverage Area will be detected and located within 25 meters of the actual gunshot location.
Reviewed Alerts	90% of gunshot incidents will be reviewed and published in less than 60 seconds.
Service Availability	The ShotSpotter Gunshot Location System service will be available to the Customer 99.9% of the time with online access to ShotSpotter data, excluding scheduled maintenance windows.

**Gunshot Detection & Location Performance**

ShotSpotter will detect and accurately locate to within 25 meters of the actual gunshot location 90% of unsuppressed, outdoor gunshots fired inside the contracted coverage area using standard, commercially available rounds greater than .25 caliber.

**Reviewed Alerts Service**

The ShotSpotter real-time Incident Review Center (IRC) will review at least 90% of all gunfire incidents within 60 seconds. This human review is intended to confirm or change the machine classification of the incident type, and, depending on the reviewer’s confidence level that the incident is or may be gunfire, will result in an alert (“Reviewed Alert”) sent to the Customer’s dispatch center, patrol car mobile data terminals (MDT), and officer smartphones (via the ShotSpotter App), based on the following criteria:

Incident Type	Action
High confidence incident is gunfire	Reviewed Gunfire Alert, (Single Gunshot “SG” or Multiple Gunshots “MG”) sent to Customer’s dispatch center, patrol car mobile data terminals (MDT), and officer smartphones (via the ShotSpotter Respond App)
Uncertain if incident is gunfire or not	Reviewed Probable Gunfire (“PG”) Alert sent to Customer’s dispatch center, patrol car MDTs, and officer smartphones
Low confidence incident is gunfire	<b>No alert</b> will be sent; incident available for Customer review in the incident history available through Insight

<sup>1</sup> See attached “ShotSpotter – Definition of Key Terms” for a complete definition of terms associated with this SLA and further details in the expanded definitions listed below the Summary. The basis for this SLA and performance measurement will be total gunshot incidents as defined by the Definition of Key Terms.

Reviewed Alerts are sent to the Customer's dispatch center, patrol car MDTs, and officer smartphones. Information in a Reviewed Alert will include the following:

- "Dot on the map" with latitude and longitude indicating the location of the incident.
- Parcel address closest to location of the incident.
- When available, additional situational awareness data points may be included, such as:
  - Qualitative data on the type/severity of incident: Fully automatic, High Capacity
  - Other comments (if any)

The ShotSpotter Respond App, and Insight provide the Customer with full and immediate access to incident history including information ShotSpotter uses in its internal review process. This information includes, among other things, the initial incident classification and any reclassifications of an incident, incident audio wave forms, and incident audio files. This data access is available as long as the Customer is under active subscription.

### **Service Availability**

The ShotSpotter Respond System<sup>2</sup> will be able to detect gunfire and available to users with online access to ShotSpotter data 99.9% of the time, on a 24x7 by 365 day per year basis, excluding: a) scheduled maintenance periods which will be announced to Customer in advance; b) select holidays; and c) third party network outages beyond ShotSpotter's control.

### **Customer SLA Credits**

Each Service Level measurement shall be determined quarterly, the results of which will be reviewed during the periodic account review meetings with Customer. For each calendar quarter that ShotSpotter does not meet at least two of the three above standards, a fee reduction representing one free week of service (for the affected Coverage Area) for each missed quarter shall be included during a future Customer renewal.

### **Service Level Exclusions and Modifications**

ShotSpotter takes commercially reasonable efforts to maintain Service Levels at all times. However, Service Level performance during New Year's Eve and Independence Day and the 48-hour periods before and after these holidays, are specifically excluded from Service Level standards. During these excluded periods, because of the large amount of fireworks activity, ShotSpotter uses fireworks suppression techniques<sup>3</sup>.

The ShotSpotter sensors send incident information to the ShotSpotter cloud via third party cellular, wireless or wired networks. ShotSpotter is not responsible for outages on the third-party networks.

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<sup>2</sup> Respond service includes all database, applications, and communications services hosted by ShotSpotter, Inc. at our data center and specifically exclude Customer's internal network or systems or 3<sup>rd</sup> party communications networks, e.g. Verizon, AT&T, Sprint/T-Mobile, or Customer's Internet Service Provider.

<sup>3</sup> ShotSpotter will put the ShotSpotter system into "fireworks suppression mode" during this period in order to reduce the non-gunfire incidents required for human classification. ShotSpotter will formally inform the customer prior to the system being placed in fireworks suppression mode and when the mode is disabled. While in fireworks suppression mode, the incident alerts determined to be fireworks are not sent to the reviewer nor the Customer dispatch center, patrol car MDTs, and officer smartphones; however, these non-gunfire incidents will continue to be stored in the database for use if required at a later time.

### Service Failure Notification

Should ShotSpotter identify any condition (disruption, degradation or failure of network, cloud, servers, sensors etc.) that impacts ShotSpotter's ability to meet the Gunshot Detection & Location standard (above), ShotSpotter will proactively notify the Customer with: a) a brief explanation of the condition; b) how the Customer's service is affected; and c) the approximate timeframe for resolution. ShotSpotter will also notify the Customer once any such condition is resolved.

### Customer Responsibilities

The purpose of the Reviewed Alert service is to provide incident data to the Customer, reviewed, analyzed and classified in the manner described above. However, it is the sole responsibility of the Customer to interpret the data provided, and to determine any appropriate follow-up reaction or response, including whether or not to dispatch emergency responder resources based on a Reviewed Alert. ShotSpotter does not assume any obligation, duty or responsibility for reaction, response, or dispatch decisions, which are solely and exclusively the responsibility of Customer, or for the consequences or outcomes of any decisions made or not made by the Customer in reliance, in whole or in part, on any services provided by ShotSpotter.

Customer must inform ShotSpotter when Verified Incidents of gunfire are missed by the ShotSpotter Respond System in order to properly calculate Performance Rate, as defined below.

Customer is responsible for providing any required workstations, mobile devices and internet access for the Customer's dispatch center, patrol car MDTs, and officer smartphones, or Insight.

### Support Level Matrix

Support Level	Tier 1 Support (IRC)	Tier 2 Support (Customer Support)
Features	<ul style="list-style-type: none"> <li>Login support</li> <li>Report a misclassification</li> <li>Report a missed incident</li> <li>Report a mislocated incident</li> <li>Basic audio request</li> <li>General/application questions</li> <li>Request for ILS</li> </ul>	<p>Normal Support:</p> <ul style="list-style-type: none"> <li>Analysis of missed gunshots</li> <li>Detailed audio search</li> <li>Performance analysis</li> <li>Integration issues</li> </ul> <p>Critical Support:</p> <ul style="list-style-type: none"> <li>System outage</li> </ul>
Hours of Operation	24x7x365	<p>Normal Support: 5 am – 11 pm Pacific Time Zone</p> <p>Escalation: 24x7x365</p>

### ShotSpotter – Definition of Key Terms

The ShotSpotter Respond System will provide data for correct detection and accurate location for ninety percent (90%) of detectable (outdoor, unsuppressed) community gunfire which occurs within a coverage area, the “Coverage Area”, provided the measurement is Statistically Significant, as defined below. This performance rate shall be calculated as a percentage as follows:

$$\text{Performance Rate} = \frac{\text{NumberAccuratelyLocated}}{(\text{NumberAccuratelyLocated} + \text{NumberNotDetected} + \text{NumberMislocated})}$$

where the “Performance Rate” is a number expressed as a percentage, “NumberAccuratelyLocated” is the number of “Gunfire Incidents” occurring within the Coverage Area during the specified period for which the ShotSpotter Respond System produced an Accurate Location, NumberMislocated is the number of Verified Incidents (a “Verified Incident” is an incident where Customer has physical or other credible evidence that gunfire took place) for which the ShotSpotter Respond System produced an inaccurate location (i.e., a Mislocated Incident), and NumberNotDetected is the number of Verified Incidents for which the ShotSpotter Respond System failed to report a location at all (i.e., Missed Incidents).

An “Accurate Location” shall mean an incident located by the ShotSpotter Respond System to a latitude/longitude coordinate that lies within a 25-meter radius of the confirmed shooter’s location (25 meters = approximately 82 feet). “Detectable Gunfire” incidents are unsuppressed discharges of ballistic firearms which occur fully outdoors in free space (i.e. not in doorways, vestibules, windows, vehicles, etc.) using standard commercially available rounds of caliber greater than .25.

ShotSpotter Review Period is measured as the period commencing when the Incident Review Center (IRC) receives the alert and the first audio download to the time it is published to the customer

ShotSpotter Respond System performance is guaranteed after a “Statistically Significant” set of incidents has been detected in accordance with timeframes set forth herein and following DQV and commercial system acceptance. The ShotSpotter Respond System is designed to detect gunfire which is typically well distributed throughout the Coverage Area; however, performance should not be construed to mean that 90% of gunfire fired at any given location within the Coverage Area will be detected and located within the guaranteed accuracy.

The ShotSpotter Respond System is not a “point protection” system and is therefore not designed to consistently detect gunfire at every single location within the Coverage Area, but rather to Accurately Locate 90% of the Detectable Incidents in aggregate throughout the entire Coverage Area. There may be certain locations within the Coverage Area where obstacles and ambient noise impede and/or overshadow the propagation of acoustic energy such that locating the origin at those positions is inconsistent or impossible. The Performance Rate calculation is thus specifically tied to the Community Gunfire across the entire Coverage Area.

Statistically Significant shall be defined as measurements and calculations which shall be performed as follows: (a) Across an entire Coverage Area; (b) Aggregating over a period of at least 30 days under weather conditions seasonally normal for the area; and (c) Provided that the total number of gunfire incidents being counted is equal to or greater than: (i) thirty (30) incidents for systems of up to three (3) square miles of Coverage Area, or (ii) ten (10) incidents multiplied by the number of square miles of Coverage Area for systems where one or more Coverage Areas are three (3) square miles or larger.

## Confidentiality and Non-Disclosure Agreement

During the term of that certain ~~[Agreement/Cooperative Procurement Contract]~~ dated as of \_\_\_\_\_, 20\_\_, between the City of San Diego, a municipal corporation (City) and ~~ShotSpotter, Inc.~~, a Delaware ~~[corporation/LLC]~~ (Contractor) for the provision of gunshot detection and location services [describe services] (Contract), City and Contractor (hereinafter each referred to individually as a “Party” and collectively as the “Parties”) may be exposed to important business or technical information which is the property of the other Party. The unauthorized use or disclosure of this information could harm the business of the owner of the information. For this reason, and in consideration of the mutual covenants contained in this Confidentiality and Non-Disclosure Agreement (Agreement) and the mutual disclosure of confidential information to each other, the Parties agree as follows:

### **1. Confidential Information.**

(a) Confidential Information is information disclosed by the Disclosing Party (Disclosing Party) to the Receiving Party (Receiving Party) which is non-public, proprietary or confidential in nature, whether provided in writing, orally, visually, electronically or by other means. Confidential Information includes, but is not limited to the following: (i) know-how, trade secrets, tools, methods, methodologies, techniques, designs, specifications, computer source code, customer lists, customer information, marketing plans, personnel information, financial information, business strategies, and information relating to released or unreleased software, hardware or technology; (ii) information received by the Disclosing Party from third parties under confidential conditions which information is identified by the Disclosing Party as being subject to such conditions, and (iii) the Disclosing Party’s Trade Secrets. Trade Secrets means information which: (a) derives economic value, actual or potential, from not being generally known to, or readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and which is the subject of efforts that are reasonable under the circumstances to maintain its secrecy, or (b) is otherwise a Trade Secret as defined by California law. Confidential Information disclosed to the Receiving Party by any Disclosing Party subsidiary, affiliate, or agent is covered by this Agreement.

(b) Confidential Information does not include any information that: (i) is or subsequently becomes publicly available without the Receiving Party or its Representative’s (as defined below) breach of any obligation owed the Disclosing Party; (ii) became known to the Receiving Party prior to the Disclosing Party’s disclosure of such information to the Receiving Party; (iii) became known to the Receiving Party from a source other than the Disclosing Party or its affiliates or advisors other than by the breach of an obligation of confidentiality owed to the Disclosing Party; or (iv) is independently developed by the Receiving Party or its Representatives without violating any of their obligations under this Agreement. Notwithstanding anything herein, the obligations of confidentiality imposed by this Agreement do not apply to any Confidential Information which is required to be disclosed pursuant to operation of law or legal process, governmental regulation or court order. Nothing in this Agreement shall prohibit City from disclosing information that qualifies as a “public record” (as that term is defined in the California Public Records Act, codified in California Government Code sections 6250 through 6270) and which is not otherwise exempt from release under the provisions of the California Public Records Act.

## **2. Obligations.**

(a) The Parties shall each keep in confidence, and shall cause their respective Representatives to keep in confidence, all Confidential Information disclosed to either of them by the other and shall use such Confidential Information only for the mutually agreed upon objectives of the discussions between the Parties.

(b) Receiving Party shall exercise reasonable care to prevent the disclosure of Confidential Information to any third party, and in any event not less than the same precautions used by the Receiving Party to protect its own Confidential Information. Dissemination of Confidential Information shall be limited to the directors, officers, employees and advisors (including legal, accounting and financial advisors) of the Receiving Party (collectively, the "Representatives"), whose duties justify their need to know such information and then only on the basis of a clear understanding by these Representatives of their obligation to maintain the confidential status of the information and to restrict the use of the information solely to the use granted under this Agreement. The Receiving Party shall be responsible for any breach of this Agreement by its Representatives.

(c) All Confidential Information, including all tangible embodiments, copies, reproductions and summaries thereof, and any other information and materials provided by the Disclosing Party to the Receiving Party, shall remain the sole and exclusive property of the Disclosing Party.

(d) Receiving Party shall immediately report to the Disclosing Party any attempt by the Receiving Party's Representatives to disclose any portion of the Confidential Information without authorization from the Disclosing Party, and shall cooperate with the Disclosing Party in every reasonable way to help the Disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use.

(e) At the Disclosing Party's request, to the extent legally permissible, the Receiving Party shall return all originals, copies, reproductions and summaries of Confidential Information in the possession of the Receiving Party or its Representatives.

## **3. Duration.**

This Agreement shall be effective as of the date that it is executed by the last Party to sign the Agreement, and approved by the City Attorney (Effective Date) and will survive for a period of three (3) years after the Effective Date. For Confidential Information that constitutes a Trade Secret, the restrictions set forth in this Agreement shall continue in effect for so long as such information remains a Trade Secret. This Agreement shall inure to the benefit of, and be binding upon, the Parties, their successors, and assigns.

## **4. Miscellaneous.**

(a) This Agreement shall be construed and controlled by laws of the State of California without reference to the provisions governing conflict of laws. Any action or suit brought by the Parties relating to this Agreement shall be brought and conducted solely and exclusively in the State and federal courts having jurisdiction in the County of San Diego. BY EXECUTION OF THIS AGREEMENT, EACH PARTY HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE IN SUCH COURT, AND WAIVES



ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.

(b) This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. It shall not be modified except by a written agreement dated after the date of this Agreement and signed by both Parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of Disclosing Party, its agents, or employees, but only by an instrument in writing signed by an authorized officer of Disclosing Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

(c) Subject to the limitations set forth in this Agreement, this Agreement shall inure to the benefit of and be binding upon the Parties, their successors and assigns.

(d) This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, this Agreement is executed by the Parties acting by and through their authorized officers.

**CONTRACTOR**

ShotSpotter, Inc.

By: 

Name: Roxanne Lerner

Title: Contracts Manager

Date: May 11, 2021

**CITY**

**City of San Diego**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form this \_\_ day of \_\_\_\_\_, 201\_\_.

MARA W. ELLIOTT, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

\_\_\_\_\_  
Print Name

## **EXHIBIT D: MASTER USE AND OCCUPANCY AGREEMENT BETWEEN CITY OF SAN DIEGO AND SHOTSPOTTER, INC.**

This CITY OF SAN DIEGO MASTER USE AND OCCUPANCY PERMIT (“MUOA, ”) is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation (“CITY”), and SHOTSPOTTER, INC., a Delaware corporation (“LICENSEE”), hereinafter collectively referred to as the “Parties,” to be effective on the first day of the first month following the date of execution by CITY (“Effective Date”), once the MUOA is signed by the San Diego City Attorney.

### **RECITALS**

A. The Parties wish to enter into an Agreement whereby CITY will retain LICENSEE services for the ongoing use and occupancy of existing gunshot detection equipment and alerting software.

B. This MUOA is Exhibit D to the Agreement Between the City of San Diego and ShotSpotter, Inc. to Furnish the City of San Diego with a License to Use the Gunshot Detection, Location, and Forensic Analysis Service and Related Services (“Agreement”) entered into by and between the Parties for these services.

C. As part of the Agreement between the Parties for such services, the parties agree that CITY will allow LICENSEE to place certain equipment on CITY-owned property, subject to the terms and conditions of this MUOA, which includes proper operation, installation, maintenance, and subsequent removal of all equipment.

D. CITY is the record owner of certain public rights-of-way within the City of San Diego.

E. Under a previous agreement for services, LICENSEE erected, installed, maintained and operated within the CITY’S public rights-of-way ShotSpotter Respond (formerly Flex) System Sensors (“Sensors”) including acoustic gunshot sensor, mounting brackets and hardware, power supply, electrical cabling, grounding wires, and for street light installations only, a photocell power adapter, which facilities are more fully defined below as “Communications Equipment.” LICENSEE desires to maintain these Sensors as installed.

F. CITY is willing to grant LICENSEE this MUOA for the right to use CITY-owned light poles located in the public right-of way for the ongoing use, occupancy, operation and maintenance of the Communications Equipment (defined below), including attaching the Communications Equipment to CITY-owned Street Light Poles in order to provide better service for the ShotSpotter Respond System.

G. Notwithstanding anything to the contrary contained in this MUOA, no provision contained herein shall be construed to mean that the LICENSEE is paying a use fee or is being granted permission for any ground space portion of the public right-of-way.

FOR VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **1. DEFINITIONS.**

As used in this MUOA, the terms listed below are defined as follows:

- 1.1. “Approved Site” – a Site (defined below) for which all approvals required for construction or installation to commence have been obtained.
- 1.2. “Communications Equipment” – includes, but is not limited to, LICENSEE’S acoustic gunshot sensor, mounting brackets and hardware, power supply, electrical cabling, grounding wires, and for street light installations only, a photocell power adapter, more particularly described and depicted in Exhibit C as may be updated from time to time at CITY’S sole discretion.
- 1.3. “Emergency” – imminent danger to the public health, safety or welfare or property.
- 1.4. “Hazardous Substances” – those hazardous substances listed by the Environmental Protection Agency (“EPA”) in regularly released reports and any other substances incorporated into the State of California’s list of hazardous substances, and all types of petroleum-related substances and their chemical constituents.
- 1.5. “License Areas” – LICENSEE’S physical footprint on various CITY-owned Sites (defined below), more particularly depicted in Exhibit A and described/listed in Exhibit B as updated from time to time.
- 1.6. “LICENSEE’S Operations” – LICENSEE’S development, occupancy, use, and/or maintenance of the License Areas.
- 1.7. “Site” – a Street Light Pole (defined below) or other City-owned property where the Communications Equipment is installed pursuant to this MUOA, each Site being described/listed in Exhibit B as updated from time to time at CITY’S sole discretion.
- 1.8. “Street Light Pole” – any concrete, fiberglass, metal, or wooden pole that has a mast arm for electrolier support.

## **2. USE OF LICENSE AREAS.**

LICENSEE shall use the License Areas solely for the purposes, with proper permits and approvals, using, modifying, operating, maintaining, and removing, all at LICENSEE’S sole cost and expense, the Communications Equipment (“Permit Use”) only as depicted in Exhibit C.

- 2.1. Primary Purpose of Street Light Poles. Any Street Light Pole is for the primary purpose of providing lighting but may have the secondary purpose of accommodating

LICENSEE'S Operations at the License Areas.

- 2.2. Other Uses. LICENSEE shall not operate the Communications Equipment or use the License Areas for other related or incidental activities of any kind without CITY'S prior written consent, which consent shall be in CITY'S sole discretion. Communications Equipment installed on a Traffic Signal shall not interfere with the operation of the Traffic Signal, or cause visual impairment, distraction, or confusion to motorists.
- 2.3. No Nuisance. LICENSEE shall not use the License Area in any manner which creates a nuisance, as defined in California Civil Code section 3479.
- 2.4. Nothing contained in this MUOA shall be construed as a limitation, restriction or prohibition against CITY entering into agreements with other parties regarding the use of the License Areas, Sites or other facilities or the CITY issuing permits for the use of its rights-of-way.

**3. RIGHT TO ENTER AND OCCUPY.**

Subject to the terms and conditions of this MUOA, CITY hereby grants permission to LICENSEE, its officers, employees, agents, and contractors to enter upon and occupy the License Areas solely for the purpose of the License Use.

- 3.1. License Only. This MUOA is a license to use CITY-owned property. It is not a lease.

**4. TERM.**

- 4.1. The term of this MUOA ("Term") shall be the same as Article I of the Agreement with the limitation that under no circumstances shall the MUOA exceed five (5) years, commencing on the Effective Date of the Agreement. Termination of the Agreement will automatically terminate this MUOA. Upon termination, LICENSEE shall immediately cease LICENSEE'S Operations and remove LICENSEE'S improvements and personal property from the License Areas (pursuant to Section 27 of this MUOA).
- 4.2. No Holdover. LICENSEE may not continue in possession of the License Areas past the expiration or earlier revocation or termination of this MUOA.

**5. LICENSEE'S RISK.**

LICENSEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with LICENSEE'S Operations and any damages to the improvements on, under, or in the vicinity of the License Areas resulting directly or indirectly thereby.

**6. ACCEPTANCE OF LICENSE AREAS.**

By signing this MUOA, LICENSEE represents and warrants that it has independently inspected the License Areas and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the License Areas and their suitability for the License Use. LICENSEE

further represents and warrants that LICENSEE is not relying on any representation by CITY as to the condition of the License Areas or their suitability for the License Use, and that LICENSEE is relying solely on its own and independent inspections, tests, investigations, and observations of the License Areas in entering into this MUOA. LICENSEE accepts the License Areas in their current condition and acknowledges and agrees that CITY has fulfilled all obligations CITY may have had to improve, modify, repair, replace, alter, or otherwise develop the License Areas prior to the Effective Date. LICENSEE shall not hold CITY responsible for any defects, whether apparent or latent, within the License Areas. LICENSEE accepts and assumes all risk of harm to all persons and property, including, without limitation, LICENSEE'S employees, from any defects within the License Areas, and shall be solely responsible therefor. LICENSEE has been given the opportunity to investigate the License Areas for the presence of any Hazardous Substances, including, without limitation, the opportunity to perform soil borings and other tests. LICENSEE shall notify CITY if LICENSEE'S investigations indicate the presence of any Hazardous Substances in any of the License Areas. LICENSEE waives any claims against CITY which may result from the presence of Hazardous Substances on or within any of the License Areas.

## **7. DEVELOPMENT OF SITES.**

Prior to the execution of this MUOA, LICENSEE shall provide to CITY a full and complete list of proposed known Sites that will be covered by this MUOA, which list shall be attached hereto as Exhibit B. LICENSEE shall also provide to CITY, prior to the execution of this MUOA, full and complete site plans for each Site listed on Exhibit A. The Site Plans will be attached hereto as Exhibit C.

LICENSEE shall not develop any Site in the License Areas unless and until this MUOA has been executed (or if applicable, amended) by the Parties and approved by the San Diego City Attorney to include the Sites in Exhibits A and B of this MUOA. LICENSEE shall develop each Site in the License Areas in accordance with its respective site plans (LICENSEE'S standard drawings) approved by CITY'S Development Services Department (or other CITY department, as appropriate), attached hereto as Exhibit C as updated from time to time, in the CITY'S sole discretion. CITY may, in its sole discretion, authorize changes to such plans, provided the principal components thereof are not modified, and a document evidencing approved changes is filed with READ.

## **8. IMPROVEMENTS AND ALTERATIONS.**

Other than as approved by the site plans and depicted in Exhibit C, LICENSEE shall not construct any improvements, structures, or installations in the License Areas, or make any alterations to the License Areas (with the exception of necessary maintenance and/or repairs that does not include swapping out or replacing any of the Communications Equipment) without CITY'S prior written consent, which consent shall be in CITY'S sole discretion. This includes modifications that are considered "eligible facilities" under Section 6409 of the Middle-Class Tax Relief and Job Creation Act. LICENSEE shall not make any structural or architectural design alterations to approved improvements, structures, or installations in the License Areas

without CITY'S prior written consent, which consent shall be in CITY'S sole discretion. CITY shall not be obligated by this MUOA to make, or assume any expense for, any improvements or alterations.

- 8.1. Alterations to Communications Equipment. LICENSEE shall not make any alterations, additions or improvements to the Communications Equipment, except for routine maintenance that does not include swapping out or replacing any of the Communications Equipment, unless: (1) LICENSEE obtains CITY'S prior written consent, which consent shall be in CITY'S sole discretion; (2) the alterations, additions or improvements do not damage or interfere with any adjacent improvements in the License Areas; and (3) the alterations, additions or improvements comply with the requirements set forth in Exhibit D. Nothing in this section shall be construed to eliminate LICENSEE'S obligation to obtain development related permits and approvals for any alterations to the Communications Equipment that may be required by CITY'S Development Services Department or any other governmental agency. READ retains the right to deny any request for modification or alteration of a Site as a proprietary right, even if CITY'S Development Services Department is required by federal law to approve or permit such request.
- 8.2. Information to Permitting Authorities. In obtaining any required permits for improvements, structures, installations, and/or alterations in the License Areas, LICENSEE shall inform permitting authorities, in writing, that the License Areas are CITY-owned property.
- 8.3. Repair and Restoration. Nothing in this section shall relieve LICENSEE of any obligation under this MUOA to maintain the License Areas in a decent, safe, healthy, and sanitary condition, as required in Section 15 of this MUOA.
- 8.4. Emergency. In the event of an Emergency, as soon as practicable thereafter and not later than two (2) business days after having taken such action, LICENSEE shall advise CITY in writing of the emergency work performed or the action taken with respect to any emergency modification or alteration of LICENSEE'S Communications Equipment. LICENSEE shall acquire any necessary permits, if any, to cover the emergency work performed.
- 8.5. Accidental Damage by CITY. In the event CITY should cut or damage LICENSEE'S communication line or any Communications Equipment, LICENSEE agrees to perform all repairs at its sole cost and expense.

## **9. COMPLIANCE WITH LAWS AND POLICIES.**

- 9.1. General. LICENSEE'S Operations shall, at all times, comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments, at LICENSEE'S sole cost and expense. Upon receipt of the same, LICENSEE shall comply with any and all notices issued by CITY under the authority of all laws, statutes, ordinances, or regulations.

- 9.2. Nondiscrimination/Equal Opportunity. LICENSEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, gender identity, gender expression, sexual orientation, medical status, national origin, age, marital status, or disability in LICENSEE'S Operations.

## **10. STORM WATER POLLUTION PREVENTION PROGRAM.**

LICENSEE shall comply with the CITY's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the San Diego Municipal Code, as may be amended, and any and all applicable Minimum Best Management Practice requirements, as defined in the City's Jurisdictional Runoff Management Plan, in performing or delivering services at City owned, Permitted, or managed property, or in performance of services and activities on behalf of CITY regardless of location.

LICENSEE shall comply with CITY's Jurisdictional Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution with CITY boundaries as adopted by the CITY's City Council on July 1, 2015, via Resolution No. 309791, as may be amended.

LICENSEE shall comply with each CITY facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

## **11. TELECOMMUNICATIONS PROVISIONS.**

- 11.1. Entire Installation. LICENSEE warrants that the Communications Equipment listed in Exhibit C constitutes the entire installation at each Site within the License Areas. LICENSEE shall update Exhibit C from time to time as any changes or additions to the Communications Equipment are made, or within thirty (30) calendar days after CITY'S demand for such an update. No changes or additions to the Communications Equipment shall be made without first obtaining written approval by CITY. Notwithstanding the foregoing, LICENSEE shall not be required to update Exhibit C in circumstances of routine Site maintenance.
- 11.2. Radio Frequency Radiation. LICENSEE shall maintain any radio frequency ("RF") radiation associated with the Communications Equipment within the levels allowed by federal regulations set forth in Section 1.1310 of CFR 47 and OET Bulletin 65. Any portion of the License Areas casually accessible by the general public or by any worker at ground level shall be maintained below limits stated for General Population/Uncontrolled Exposure. LICENSEE shall report to CITY any portion of the License Areas discovered by LICENSEE to exceed these federally mandated limits. LICENSEE shall defend and hold the CITY harmless for any liabilities, fines or other penalties claimed or imposed against the CITY that result from the existence of excessive levels of radiation that are caused in whole or in part, or contributed to, by LICENSEE'S Operations. Hazardous RF

radiation levels may be encountered when climbing on antenna structures (refer to FCC OET Bulletin 65). Any equipment installed within the License Areas may, at times, require shutdown to allow maintenance on antenna structures. LICENSEE shall allow shutdown periods when required for this maintenance, provided CITY shall use reasonable efforts to ensure that these shutdowns do not occur during peak hours of operation. Protection of employees performing service on buildings, roofs, air-conditioning equipment, water tanks, communications equipment, or any other maintenance work is a primary concern. Any areas in which these employees may be subjected to radiation levels that exceed the General Population/Uncontrolled Exposure limits must be clearly identified as required by CAL-OSHA. LICENSEE shall provide CITY with written shutdown procedures, contact names, and telephone numbers. LICENSEE shall notify CITY, in writing, of any changes to the shutdown procedures, contact names, or telephone numbers at least ten (10) calendar days prior to such a change.

- 11.3. Radio Frequency Interference. LICENSEE warrants that all Communications Equipment installations, modifications, operation, and maintenance will not result in degraded performance or RF interference to any existing authorized uses within the License Areas by fulfilling the requirements of Exhibit D, which may be updated from time to time in CITY'S sole discretion.
- 11.4. Industry Standards. LICENSEE shall perform all Communications Equipment installations, modifications, operation, and maintenance in adherence to industry standards set by the "Standards and Guidelines for Communications Sites" Motorola R56© Manual, or any succeeding regulations or standards. In addition to the requirements of the Motorola R56© publication, installations on CITY property shall comply with the following supplemental requirements:
  - 11.4.1. LICENSEE shall remove all of its trash and debris from the License Areas at the end of each workday and on completion of each project;
  - 11.4.2. Tower and structure climbing shall be done in compliance with all CAL-OSHA requirements and General Orders propagated by the CPUC; and
  - 11.4.3. All transmitters shall have all necessary protection, such as cavity filtering and transmitter isolators, to eliminate any RF degradation of the receive signal to any other user within the License Areas.
- 11.5. Collocation. LICENSEE shall not access any other wireless communication facility or CITY-owned communications equipment (including any towers) within the License Areas without CITY'S prior written consent.
- 11.6. Interference with CITY Operations or Public Use. LICENSEE'S Operations shall not unreasonably interfere with CITY operations or public use of CITY-owned property.

## **12. WASTE, DAMAGE, OR DESTRUCTION.**



LICENSEE shall immediately give notice to CITY of any fire or any other damage that occurs on or within the License Areas that occurs either during or after the completion of construction of approved improvements. LICENSEE shall not commit, or allow to be committed, any waste or injury or any public or private nuisance in connection with the License Use. LICENSEE shall keep the License Areas clean and clear of refuse and obstructions, and dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If any portion of the License Areas is damaged by any cause that puts any portion of the License Area into a condition which is not decent, safe, healthy, and sanitary, LICENSEE shall make, or cause to be made, full repair of the damage and restore the License Areas to the condition which existed prior to the damage; or, at CITY'S option, LICENSEE shall clear and remove from the License Areas all debris resulting from the damage and restore the License Areas in accordance with plans and specifications previously submitted to and approved by CITY, in writing, in order to replace in kind and scope the operation which existed prior to the damage. LICENSEE shall commence preliminary steps toward performing repairs and/or restoration of the License Areas as soon as practicable, but no later than ten (10) calendar days after the occurrence of the fire or damage, and shall complete the required repairs and/or restoration of the License Areas within sixty (60) calendar days after such occurrence. Failure to timely repair damage to the Site and/or License Areas will be considered a default under the MUOA.

### **13. HAZARDOUS MATERIALS.**

LICENSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the License Areas by any of LICENSEE'S officers, employees, agents, contractors, invitees and guests. LICENSEE and LICENSEE'S officers, employees, agents, contractors, invitees and guests shall not install, store, utilize, generate or sell any Hazardous Substance on the License Areas without CITY'S prior written consent. LICENSEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

13.1. Release. For all purposes of this MUOA, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.

13.2. Remediation. If LICENSEE'S occupancy, use, development, maintenance, or restoration of the License Areas results in a release of a Hazardous Substance, LICENSEE shall pay all costs of remediation and removal to the CITY'S satisfaction for unrestricted reuse of the License Areas, and in accordance with all applicable laws, rules, and regulations of governmental authorities.

13.3. Removal. If LICENSEE or LICENSEE'S officers, employees, agents, contractors,

invitees and guests has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the License Areas, LICENSEE shall remove all Hazardous Substances in any type of container, equipment or device from the License Areas immediately upon or prior to the expiration or earlier termination of this MUOA. CITY reserves the right to conduct inspections of the License Areas and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the License Areas. LICENSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.

- 13.4. Indemnity. LICENSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LICENSEE'S occupancy, use, development, maintenance, or restoration of the License Areas, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LICENSEE'S officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- 13.5. Notice of Release. If LICENSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath any portion of the License Areas, LICENSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LICENSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LICENSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LICENSEE shall take all actions necessary to alleviate the danger. LICENSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the License Areas.
- 13.6. Environmental Assessment. Upon reasonable cause to believe that LICENSEE'S occupancy, use, development, maintenance, or restoration of the License Areas resulted in any Hazardous Substance being released on, from or beneath any portion of the License Areas, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at LICENSEE'S sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LICENSEE'S occupancy, use, development, maintenance, or restoration of any affected portion of the License Areas, and in what quantities. If any such Hazardous Substances exist in quantities greater than

allowed by CITY, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the License Areas, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LICENSEE shall cause, or if LICENSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the License Areas and compliance with environmental laws and regulations are achieved, and LICENSEE shall pay all costs and expenses therefor.

#### **14. SIGNS**

LICENSEE shall only post signs required by federal, state, or local regulations, including, without limitation, safety signs required by OSHA, FAA, CPUC and/or FCC. LICENSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising within the License Areas without CITY'S prior written consent, which consent shall be in CITY'S sole discretion. If any such unauthorized item is found within the License Areas, LICENSEE shall remove the item, at LICENSEE'S sole cost and expense, upon forty-eight (48) hours' notice by CITY, or CITY may then enter the License Areas and remove the item at LICENSEE'S sole cost and expense. LICENSEE shall post a clearly marked sign at each Site within the License Areas indicating LICENSEE'S name and emergency telephone number.

#### **15. MAINTENANCE OF LICENSE AREAS**

LICENSEE shall, at its sole cost and expense, leave all License Areas in the same conditions that existed prior to any installation or maintenance work and continuously maintain the License Areas throughout the Term. In doing so, LICENSEE shall, at its sole cost and expense, make all repairs, restoration, and replacements (including structural repairs and restoration of damaged or worn improvements) necessary to maintain and preserve the License Areas in a decent, safe, healthy, and sanitary condition. All such maintenance, repairs, restoration, and replacements shall be completed to the satisfaction of CITY, in conformance with the depiction of the License Areas set forth in Exhibit A, the approved site plans set forth in Exhibit C, and in compliance with all applicable codes and standards of CITY, state, and federal agencies.

15.1. CITY Maintenance. CITY reserves the right to perform any needed routine maintenance within the License Areas at any time without providing notice to LICENSEE, including, but not limited to, the replacement of light bulbs on a Street Light Pole. However, if the Contract Administrator for the San Diego Police Department should be made aware that another CITY department plans to perform non-routine maintenance, including, but not limited to, the replacement of a Street Light Pole, the Contract Administrator for the San Diego Police Department will provide LICENSEE with notice within twenty-four (24) hours of becoming aware (except in the event of an emergency or San Diego Police Department was not made aware of the non-routine maintenance, in which case, no prior notice shall be required, but the San Diego Police Department shall give LICENSEE

notice as soon as reasonably possible thereafter), and LICENSEE shall comply with all applicable safety requirements issued by CITY to ensure the safety of CITY personnel performing such maintenance within the License Areas.

- 15.2. Maintenance Procedures for Parties. The Parties shall comply with the emergency maintenance procedures set forth in Exhibit E, including the requirement to notify the other party, in writing, of any changes to its emergency contacts and telephone numbers. LICENSEE shall provide and install an emergency shut-off switch which will terminate electrical service to the LICENSEE'S equipment, with the switch to be used only as set forth in Exhibit E.

## **16. ENTRY AND INSPECTION.**

CITY may, at any time, enter the License Areas for the purpose of viewing and ascertaining the condition of the License Areas, or to protect CITY'S interest in the License Areas, or to inspect the operations conducted within the License Areas. If CITY'S entry or inspection discloses that any portion of the License Areas is not in a decent, safe, healthy, and sanitary condition, and it is in such condition as a direct result of LICENSEE, CITY may, after ten (10) calendar days written notice to LICENSEE, have any necessary maintenance work done in order to keep the License Areas in a decent, safe, healthy, and sanitary condition, all at LICENSEE'S sole cost and expense, and LICENSEE shall promptly pay any and all costs incurred by CITY in having the necessary maintenance work done. If at any time CITY determines that any portion of the License Areas is not in a decent, safe, healthy, and sanitary condition, CITY may, in its sole discretion, without additional notice, require LICENSEE to pay all costs to promptly correct any condition which is not decent, safe, healthy, and sanitary. LICENSEE agrees, and shall ensure, that the bond obtained in Section 27.4 may be used to cover the costs in this Section.

Alternatively, CITY will accept alternate security in the form a cashier's check made out to CITY in lieu of the performance bond in Section 27.4 for this purpose. Notwithstanding anything to the contrary, to the extent the maintenance work costs more than the amount of the cashier's check agreed to in Section 27.4, LICENSEE shall promptly pay any and all additional costs incurred by CITY in having the necessary maintenance work done. The right and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this MUOA and the Agreement. The rights reserved in this section shall not create any obligation on CITY or increase CITY'S obligations elsewhere in this MUOA. As part of its standard practice, LICENSEE shall schedule a pre-construction inspection and post-construction inspection for each Site within the License Areas.

## **17. UTILITIES.**

Upon approval by CITY, LICENSEE shall have access to utilities in connection with LICENSEE'S Operations. All utilities shall be installed underground unless such existing utilities are aerial and shall be used for LICENSEE'S Operations only.

## **18. TAXES.**

LICENSEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied

upon LICENSEE or the License Areas, including the land, any buildings, structures, machinery, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LICENSEE, or levied by reason of LICENSEE'S Operations, including any licenses or permits. LICENSEE acknowledges that this MUOA may create a possessory interest subject to property taxation, and that LICENSEE may be subject to the payment of taxes levied on that interest. LICENSEE shall pay all such possessory interest taxes. LICENSEE'S payment for such taxes, assessments, and/or fees shall not reduce any payment due CITY.

## **19. SUPERIOR INTERESTS.**

This MUOA is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits, licenses, easements, and rights-of-way pertaining to the License Areas, whether or not of record. LICENSEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow LICENSEE'S use of the License Areas, relative to any such superior interest. If LICENSEE'S use of the License Areas is or becomes inconsistent or incompatible with a preexisting superior interest, LICENSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

## **20. ENCUMBRANCES.**

LICENSEE shall not permit any encumbrance related to LICENSEE'S Operations. CITY may, in its sole discretion, consent to such an encumbrance if exclusively related to LICENSEE'S development of the License Areas. If an encumbrance is placed on any portion of the License Areas, LICENSEE shall diligently seek and obtain, at its sole cost and expense, the removal of the encumbrance as soon as possible upon completion of the development, if the encumbrance was authorized by CITY, or, if unauthorized, immediately upon CITY'S demand.

20.1. Liens. LICENSEE shall, at all times, protect, defend, indemnify, and hold CITY harmless from and against any and all claims for labor or materials in connection with LICENSEE'S Operations, and all costs of defending against such claims, including, without limitation, reasonable attorney fees. If LICENSEE'S Operations result in a lien or notice of lien being filed against any portion of the License Areas, LICENSEE shall, within ten (10) calendar days after such filing, either: (a) take all actions necessary to record a valid release of the lien; or (b) deliver to CITY a bond, cash, or other security acceptable to CITY in an amount sufficient to pay in full all claims of all persons seeking relief under the lien.

## **21. ASSIGNMENT AND SUBLICENSING.**

21.1. Assignment. This MUOA shall not be assigned by LICENSEE without the express written consent of CITY, which consent shall be in CITY'S sole discretion.

25.2.2. No Other Sublicensing Allowed. LESSEE shall not sublicense, or attempt to transfer any other interest or right to use the License Area, in whole or in part, the Site or any right or appurtenant privilege to the Site, without CITY'S prior

written consent, which consent shall be in CITY'S sole discretion and shall require additional compensation.

- 21.2. Provisions Binding on Successors. Except as otherwise provided in this MUOA, all of the terms, covenants, and conditions of this MUOA shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

## **22. INDEMNIFICATION.**

LICENSEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LICENSEE'S officers, employees, agents, contractors, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this MUOA or LICENSEE'S occupancy, use, development, maintenance, or restoration of the License Areas, including damages arising out of release of hazardous materials, and all expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that LICENSEE'S duty to indemnify and hold harmless shall not include any established liability arising from the sole negligence or willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LICENSEE shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

## **23. OTHER GOVERNMENTAL ACTIONS.**

By entering into this MUOA, neither CITY nor the City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the development, occupancy, use, or maintenance of the License Areas. Discretionary action includes, but is not limited to, rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required for LICENSEE'S Operations. LICENSEE shall diligently seek, at its sole cost and expense, all entitlements and actions from both CITY and other governmental agencies with jurisdiction over the License Areas, as may be necessary for LICENSEE'S Operations.

## **24. CITY'S RESERVATION OF RIGHTS.**

- 24.1. Resources. CITY reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the License Areas.
- 24.2. Use. CITY may grant and use easements or establish and use rights-of-way over, under, along, and across the License Areas for utilities, thoroughfares, or access as CITY deems advisable, in its sole discretion, for the public good.
- 24.3. Entry. CITY may enter the License Areas at any time to develop or make repairs to

municipal resources and services.

## **25. REASSIGNMENT OF SPACE.**

CITY may reassign LICENSEE to an equivalent amount of space in a different location within the Sites, if and when reasonably necessary. LICENSEE will, at the direction of CITY, relocate its Communications Equipment at LICENSEE'S sole cost and expense. This section shall not apply to underground vault sites. LICENSEE shall cooperate with CITY and its contractors during any such relocation or any renovation, repair, or other alteration of the License Areas. During physical relocation of the Communications Equipment to the relocation site, CITY will work with LICENSEE to attempt to secure an alternative CITY-approved site for LICENSEE to operate temporary installed communications equipment, which will be installed and maintained at LICENSEE'S sole cost and expense.

## **26. REVOCATION.**

### **26.1. Revocation by CITY.**

26.1.1. Revocable License. This MUOA is not a lease; it is a license to use CITY-owned property and only during the Term of this MUOA and only for the purpose of effectuating the services described in the Agreement Documents as specified in Section 2.1 of the Agreement. As such, the Parties hereby acknowledge and agree that CITY, as the Licenser, may revoke this MUOA upon default or at will at any time during the Term in accordance with this MUOA or as set forth in the Agreement. If CITY exercises its right to revoke this MUOA, CITY will provide LICENSEE written notice of the revocation, and upon LICENSEE'S receipt of the notice, LICENSEE shall immediately cease LICENSEE'S Operations and remove LICENSEE'S improvements and personal property from the License Areas (pursuant to Section 27 of this MUOA).

26.1.2. Events of Default. Each of the following shall constitute an event of default under this MUOA:

- a. LICENSEE'S breach of any of its obligations under this MUOA or the Agreement, and LICENSEE either:
  - i. fails to cure the breach within thirty (30) calendar days following written notice from CITY; or,
  - ii. if such breach is not curable within thirty (30) calendar days following written notice from CITY, fails to immediately commence to cure the breach and to diligently pursue the cure to completion.
- b. LICENSEE uses any portion of the License Areas for any unauthorized purpose.

26.2. No Obligation. CITY shall not be obligated for any loss, financial or otherwise, which

may be incurred by LICENSEE as a result of CITY'S revocation or termination of this MUOA. LICENSEE expressly waives any claim for expense or loss which LICENSEE might incur as a result of CITY'S revocation or termination of this MUOA.

- 26.3. Cumulative Remedies. CITY'S rights and remedies under this MUOA are cumulative and shall not limit or otherwise waive or deny any of CITY'S rights or remedies at law or in equity.
- 26.4. Waiver. The property constituting the License Areas is publicly owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to insist upon the strict performance of any of LICENSEE'S obligations under this MUOA, in one or more instances, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY'S waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in writing and executed by CITY to constitute a valid and binding waiver. CITY'S delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this MUOA, at law or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY'S acceptance of any Annual Use Fee shall not be a waiver of any default preceding such payment. CITY'S failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may, at any and all times, require the cure of the default.

## **27. REMOVAL OF IMPROVEMENTS AND PERSONAL PROPERTY.**

- 27.1. Improvements. Upon expiration of this MUOA (without the Parties' execution of a new License for the License Areas) or upon earlier revocation or termination of this MUOA, any and all improvements, trade fixtures, structures, installations, and/or additions to the License Areas constructed within the License Areas by LICENSEE or LICENSEE'S sublicensees, contractors, or subcontractors shall be deemed to be part of the License Areas and shall become CITY'S property free of all liens and claims. Notwithstanding the foregoing, CITY may, in its sole discretion and upon notice to LICENSEE at revocation or termination or at any time prior to the expiration of the Term, elect not to assume ownership of all or any part of such improvements, trade fixtures, structures, installations, and/or additions. In that case, LICENSEE shall, at LICENSEE'S sole cost and expense, remove those improvements, trade fixtures, structures, installations, and/or additions identified by CITY as soon as practicable, but in no event later than sixty (60) calendar days after the expiration or earlier revocation or termination of this MUOA. If any removal of such improvements, trade fixtures, structures, installations, and/or additions by LICENSEE results in damage to any portion of the License Areas, LICENSEE shall repair all such damage at LICENSEE'S sole cost and expense. If LICENSEE fails to remove any such improvements, trade fixtures, structures, installations, and/or additions identified by CITY, CITY may, at its option, remove them at LICENSEE'S sole cost and expense.
- 27.2. Personal Property. Upon expiration of this MUOA (without the Parties' execution of a



new agreement for the License Areas) or upon earlier revocation or termination of this MUOA, LICENSEE shall remove LICENSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property as soon as practicable, but in no event later than sixty (60) calendar days after the expiration or earlier revocation or termination of this MUOA. If any removal of such personal property by LICENSEE results in damage to any portion of the License Areas, LICENSEE shall repair all such damage at LICENSEE'S sole cost and expense. Any such items which LICENSEE fails to remove shall be deemed abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove such items at LICENSEE'S sole cost and expense.

27.3. CITY'S Right to Acquire. Notwithstanding the foregoing, if LICENSEE elects to dispose of any of its personal property used in connection with LICENSEE'S Operations, then upon expiration or earlier revocation or termination of this MUOA, CITY shall have the first right to acquire or purchase such personal property.

27.4. Performance Bond. LICENSEE shall obtain and provide CITY on a yearly basis proof of security in the form of a performance bond in the amount of \$35,000.00, in favor of CITY, to cover the cost to dismantle or remove LICENSEE's improvements, trade fixtures, structures, installations, additions, and personal property, including LICENSEE-owned machines, appliances, equipment ("Removal Performance Bond") constructed, installed or erected by LICENSEE or LICENSEE'S sublicensees, contractors, or subcontractors within the License Areas. The Removal Performance Bond shall be for a term of one (1) year and shall be continuously renewed, extended or replaced so that it remains in place for the entire Term of this MUOA or until LICENSEE'S secured removal obligations are performed to the satisfaction of CITY, whichever is sooner. In order to ensure continuous renewal of the Removal Performance Bond with no lapse, each bond shall be extended or replaced at least one month in advance of its expiration date. Removal costs may, at CITY's sole discretion, be reevaluated at the execution of any option year to ensure sufficient funds for removal. LICENSEE shall adjust the amount of the Removal Performance Bond at CITY's request. Failure to secure the Removal Performance Bond and all renewals and extensions thereof shall constitute breaches of the LICENSEE under this MUOA. Alternatively, CITY will accept alternate security in the form of a cashier's check in the amount of \$35,000.00, made out to CITY in lieu of a performance bond. The cashier's check must be provided to CITY prior to LICENSEE installing any equipment on CITY-owned property. The money will act as a security deposit for the entire Term of this MUOA. CITY will return any unused portion of the money to LICENSEE upon termination of this MUOA. Notwithstanding anything to the contrary, to the extent LICENSEE'S removal obligations costs more than the amount of the cashier's check, LICENSEE shall promptly pay any and all additional removal costs incurred by CITY. The right and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this MUOA and the Agreement.

## **28. NOTICES.**

Any notice required or permitted to be given under this MUOA shall be in writing and may be served personally, sent by United States mail, postage prepaid, or sent by reliable overnight courier, addressed to the Parties as follows, or to any mortgagee, trustee, or beneficiary, as applicable, at the appropriate address designated, in writing, by the respective party:

**To LICENSEE:**

ShotSpotter, Inc.  
Attn: Richard Park, Corporate Controller  
7979 Gateway Blvd, Suite 210, Newark, CA 94560  
(510) 794-3134  
[accounting@shotspotter.com](mailto:accounting@shotspotter.com)

**To Contract Administrator for the CITY:**

San Diego Police Department  
Operational Support  
Attn: Lisa McKean, Lieutenant  
1401 Broadway San Diego, Ca. 92101  
(619) 531-2149  
[lmckean@pd.sandiego.gov](mailto:lmckean@pd.sandiego.gov)

**To CITY'S Street Division:**

City of San Diego  
Street Division  
Attn: Deputy Director  
2781 Caminito de Chollas  
San Diego, CA 92105

28.1. Address Changes. Any party entitled or required to receive notice under this MUOA may, by like notice, designate a different address to which notices shall be sent.

28.2. When Effective. Notice shall be effective upon personal service, or five (5) calendar days after deposit in the U. S. mail.

**29. MISCELLANEOUS PROVISIONS.**

29.1. Governing Law. This MUOA shall be governed, construed, and enforced in accordance with the laws of the State of California.

29.2. Entire Understanding. This MUOA contains the entire understanding of the Parties. CITY and LICENSEE agree that there is no other written or oral understanding between them with respect to LICENSEE'S Operations. Each party has relied on its own examination of the License Areas, advice from its own attorneys, and the warranties, representations, and covenants within the MUOA itself. Each party agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is

not contained in this MUOA. The failure or refusal of any party to read this MUOA or other documents, inspect the License Areas, and obtain legal or other advice relevant to this transaction shall constitute a waiver of any objection, contention, or claim that might have been based on such actions.

- 29.3. No Affiliation. Nothing contained in this MUOA shall be deemed or construed to create a partnership, joint venture, or other affiliation between the Parties, or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LICENSEE or any other party or entity.
- 29.4. Standard of Conduct. LICENSEE and its employees shall, at all times, conduct themselves and LICENSEE'S Operations in a creditable manner and in accordance with industry standards.
- 29.5. Joint and Several Liability. If LICENSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LICENSEE under this MUOA.
- 29.6. Unavoidable Delay. If the performance of any act required of CITY or LICENSEE under this MUOA is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, that party shall be excused from performing that act for a period equal to the period of the prevention or delay. If CITY or LICENSEE claims the existence of such a delay, the party claiming the delay shall notify the other party, in writing, of that fact within ten (10) calendar days after the beginning of any such claimed delay.
- 29.7. CITY'S Consent or Approval. Whenever required under this MUOA, CITY'S consent or approval shall mean the written consent or approval of CITY'S Mayor or his designee, unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made at the Mayor's discretion, unless otherwise expressly provided.
- 29.8. License Modifications. This MUOA shall not be modified, altered, or amended unless the modification, alteration, or amendment is in writing and signed by the Parties.
- 29.9. Cost Recovery. CITY collects various fees to offset the administrative costs incurred for CITY staff services. CITY shall process each of LICENSEE'S service requests upon receipt of LICENSEE'S payment of the applicable fee. The fee schedule, which is on file with the Office of the City Clerk, may be updated from time to time in CITY'S sole discretion.
- 29.10. Survival. Any obligation under this MUOA that requires a party's performance of that obligation after the expiration or earlier revocation or termination of this MUOA shall survive such expiration, revocation, or termination.
- 29.11. Number and Gender. In this MUOA, words in the singular number shall include the

plural, and *vice versa*, as appropriate to the context. Words of either gender shall include the other gender.

- 29.12. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Lease is or is not a public record subject to disclosure under the California Public Records Act (CPRA). LESSEE shall hold CITY, its elected officials, officers and employees harmless for CITY'S disclosure of any such information in response to a request for information under the CPRA.
- 29.13. Authority to Execute and Deliver License. Each individual executing this MUOA on behalf of another person or legal entity represents and warrants that he or she is authorized to execute and deliver this MUOA on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this MUOA is binding upon such person or entity in accordance with its terms. Each person executing this MUOA on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association, in good standing in its home state, and that such entity is qualified to do business in the State of California.

[The remainder of this page intentionally left blank.]

29.14. Exhibits Incorporated. All exhibits referenced in this MUOA are incorporated into the MUOA by this reference.

IN WITNESS WHEREOF, this MUOA is executed by CITY and LICENSEE, to be effective as of the Effective Date.


Date: \_\_\_\_\_

THE CITY OF SAN DIEGO, a California municipal corporation

By \_\_\_\_\_  
Penny Maus  
Director, Real Estate Assets

Date: July 2, 2021

LICENSEE:

By  \_\_\_\_\_  
(Print Name) Roxanne Lerner  
(Title) Contracts Manager

APPROVED AS TO FORM:

Date: \_\_\_\_\_

MARA W. ELLIOTT, City Attorney

By \_\_\_\_\_

\_\_\_\_\_  
Deputy City Attorney

**Exhibit D:**  
**Interference Protection Requirements**

1. Radio Frequency Interference to CITY Radio Equipment. The radio equipment use proposed by LICENSEE shall not directly or indirectly result in degraded technical performance of CITY'S existing radio equipment installed within the License Areas or used in the general area. Resulting degraded technical performance in this instance includes, but is not limited to: (a) detectable or measurable received intermodulation; (b) audio distortion or noise; and (c) receiver desensitization in excess of 3.0 dB with respect to 12dB SINAD test.
2. Modifications to Equipment. Modifications to transmitting equipment (including, but not limited to, those which change effective radiated power, transmitter frequency, transmitter modulation, and/or transmitter spurious and harmonic emissions) may require re-notification to existing licensees and/or users operating within the License Areas, as well as a new Report.
3. Resulting Interference. Should an interference problem occur within the License Areas (or surrounding area) as a result of any new and/or modified equipment and/or installation, LICENSEE shall initiate mutually agreeable actions among the affected parties to mitigate or resolve the interference problem. If harmful interference cannot be resolved, CITY may recognize the right of other authorized users and, in CITY'S sole discretion, withhold consent or disallow use of the new and/or modified equipment and/or installation, pending settlement of the interference problems between LICENSEE and other authorized users.
4. No Obligation by CITY for Loss. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by LICENSEE as a result of the foregoing interference protection requirements, and LICENSEE expressly waives any claim for expense or loss which LICENSEE might incur as a result of CITY'S enforcement thereof.

**Exhibit E:**  
**Emergency Maintenance Procedures**

If LICENSEE discovers that any of the Communications Equipment is damaged, LICENSEE shall immediately notify **CITY'S Station 38 at (619) 527-7660**.

If CITY discovers that any of the Communications Equipment is damaged, CITY shall immediately notify **LICENSEE'S Customer Support Department at 1-888-274-6877**.

CITY may require any replacement Communications Equipment to be relocated, as provided for in this MUOA.

If the Communications Equipment causes any interference to CITY'S telecommunications equipment and/or system, CITY may require such Communications Equipment to be removed permanently and replaced at another location, as provided for in this MUOA.

If CITY'S telecommunications and/or Traffic Control systems require emergency repair or maintenance by CITY, CITY shall employ use of LICENSEE'S emergency shut off switch, per Section 15.2, and notify LICENSEE immediately at the number above.

LICENSEE shall not unreasonably interfere with pedestrian or vehicle traffic while installing or maintaining the Communications Equipment.

If a party changes its emergency contact telephone information, that party shall immediately notify the other party of the new contact information at the telephone number provided above, and, within ten (10) calendar days, provide the other party with written notice of the new contact information, in accordance with this MUOA.